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JUDGE JEFFREYS

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GEORGE, BARON JEFFREYS OF WEM, AS LORD CHANCELLOR
From the portrait by Sir Godfrey Kneller at Erddig Park, Wrexham
By permission of Simon Yorke, Esq.

Fr.

JUDGE JEFFREYS

BY

H. MONTGOMERY HYDE, D.Lit.

FELLOW OF THE ROYAL HISTORICAL SOCIETY
BARRISTER-AT-LAW OF THE MIDDLE TEMPLE

WITH A FOREWORD

BY

THE RT. HON. SIR NORMAN BIRKETT, P.C.

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TO MY WIFE

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PREFACE TO FIRST EDITION

THE career of George Jeffreys, known to history by his substantive rank of "judge," is perhaps the most spectacular of all those covered by the reigns of Charles II and James II. His rise in the legal firmament can only be described as meteoric. By birth a Welshman of good family, he became Common Serjeant of London at the age of twenty-six, Recorder of the City in his thirty-fourth year, Lord Chief Justice of England at thirty-eight and Lord Chancellor when he was forty; he remains the youngest occupant of the Woolsack in history. He figured either as counsel or judge in almost every State trial of importance during the period concluding with the notorious "Bloody Assize" in the West of England, where he was sent at the head of a Commission to try the rebels after the Duke of Monmouth's ill-fated rebellion in 1685. He later sat as President of the Court of Ecclesiastical Commission, whose illegal activities were among the causes which cost James II his throne. With the Revolution of 1688 his flight and arrest followed swiftly; four months later he died a prisoner in the Tower, the most thoroughly hated man in the country. He has been mourned by few, since his reputation for bloodthirstiness is probably unrivalled in our judicial annals.

Ruthless Judge Jeffreys undoubtedly was, but he had certain other qualities of character and personality which contribute to make the conventional picture of the man much less unattractive than the generally accepted version. This revision of judgment is emphasized by a considerable amount of fresh documentary material which has become available since the researches of previous writers, and of which fortunately I have been able to make full use. First of all, I must thank Mr. A. Gerald Jeffreys for kindly putting at my disposal authenticated copies of a number of interesting private letters¹ which escaped destruction, the fate of the majority of Jeffreys' papers at the Revolution, and descended to him through his lineal ancestor, the Judge's younger brother, Dr. James Jeffreys, Prebendary of Canterbury. Secondly, I must express my particular gratitude to Miss M. Melville Balfour for letting me see a unique collection of bills and accounts, which she possesses, showing the Judge's personal expenditure during a great part of his life. Miss Balfour and her mother, the late Mrs. M. C. Balfour, made a careful study of Jeffreys' life based to a great extent on this material, and it is to be regretted that the fruits of their researches have been embodied only in periodical form. Details of this work are given in footnotes to the text and also in the bibliographical note at the end of the book.

I am most grateful to Mr. G. D. Hobson, of Messrs. Sotheby & Co., for kindly supplying me with details of Jeffreys' manuscripts which have passed through their sale-room. The following have also helped in various ways in the preparation of this book, and I am glad to have this opportunity of recording my sense of obligation to them: Mr. H. St. George Gray, Curator of the Somerset County Museum; Lieutenant-Colonel C. D. Drew, D.S.O., Curator of the Dorset County Museum; Mr. R. F. Prideaux, Town Clerk of Shrewsbury; the Rev. D. J. Jones, B.Sc., R.N. (ret'd.), Rector of Hedgerley, Bucks; Mr. P. J. Dobell,

¹ These are cited in the footnotes to the text as Jeffreys MSS.

antiquarian bookseller of Tunbridge Wells ; Mr. H. A. C. Sturgess, Librarian of the Middle Temple ; the staffs of the London Library and the Public Record Office ; the Trustees of the British Museum ; and the authorities in charge of the Bodleian Library, Oxford. I am furthermore indebted to those who have permitted the reproduction of pictures and prints in their possession : the source has been indicated beneath each plate.

Finally, my thanks are due to Miss M. Melville Balfour and Mr. Ivan Cruchley, barrister-at-law, for kindly reading the book in proof, and for making a number of valuable suggestions of which I have taken advantage.

H. MONTGOMERY HYDE.

3, PLOWDEN BUILDINGS,
TEMPLE, E.C.4.
August, 1940.

PREFACE TO SECOND EDITION

THIS book went out of print shortly after it was first published in 1940, and, owing to the destruction by enemy action a few months later of the plant from which the edition had been printed, it was not possible for its original publisher to reprint it. Copies have also been extremely difficult to obtain in the second-hand market, where they have sometimes fetched very much inflated prices.

In this new edition, which owes its appearance largely to the enterprise of Messrs. Butterworth & Co., typographical considerations have rendered impracticable any corrections to the original text. Fortunately none of any substance has been found necessary. A welcome addition, however, is the Foreword from the brilliant pen of Sir Norman Birkett, who was kind enough to take notice of the book when it first appeared.

One point of antiquarian interest is perhaps worth mentioning. Jeffreys' final resting place has not remained undisturbed by the ravages of war. The Church of St. Mary the Virgin, Aldermanbury, in the City of London, where he is buried, was almost entirely destroyed on the night of December 29, 1940, and at present it is doubtful whether it will be rebuilt.

H. M. H.

4, BRICK COURT,
TEMPLE, E.C.4.
February, 1948.

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FOREWORD

By

THE RT. HON. SIR NORMAN BIRKETT, P.C.

THE professed purpose of a Foreword is to introduce the author and to commend his work to the attention of the reading public. But Mr. Montgomery Hyde is already widely known as an accomplished and graceful writer on historical subjects, and this very book on "Judge Jeffreys" is securely established as the authoritative Life of that most remarkable man. In the strict sense, therefore, a Foreword is quite superfluous. Nevertheless, I take pride in being invited to discharge this pleasant duty, if only to acknowledge my personal indebtedness to Mr. Montgomery Hyde, and to express my own satisfaction that the merits of the original publication have won such public recognition that a second edition is now demanded.

This is in no sense surprising. The career of Judge Jeffreys is of absorbing interest, not only to lawyers, but to all who have any concern at all with human affairs. The life of Jeffreys is woven into English history. And when that career, so swift and dazzling in its rise to supreme place and power, is related to the historical background of the seventeenth century with all the resources of language and literary skill that Mr. Montgomery Hyde commands, the result is bound to be a book not only of great fascination but of permanent value too. It is gratifying to think that public acclaim endorses this verdict.

The book, I am glad to see, now appears under the imprint

of a well known and long established firm of law publishers, Messrs. Butterworth & Co. But it would be a pity if the notion were to prevail that this was a book for lawyers only. It is very much more than that. It is a book of intense human interest and its appeal should be universal. It is, of course, supremely interesting to lawyers, and to members of the Inner Temple in particular. To be one of His Majesty's Counsel and a Bencher of the Inner Temple within nine years of Call to the Bar still stirs the imagination of the lawyer. To be seated on the Woolsack and of the Peerage at forty years of age, within seventeen years of Call, with a succession of great judicial offices strewing the way behind is quite without parallel in legal history. Such a man is plainly set apart from the ordinary run of mankind, and everything that belongs to him becomes a matter of deep and abiding interest.

Mr. Montgomery Hyde satisfies this interest in the fullest and most attractive way. He describes the historical setting in which Jeffreys moved so that the currents of political thought are clearly perceived, and the great figures on the political stage are vividly presented. The analysis of the characteristics of the age is concisely and penetratingly added. In this connection it must be said that the book is especially valuable for the account of the legal system in the reigns of Charles II and James II, and in truth, no just estimate of the character of Jeffreys could be made without reference to it. According to our ideas, the administration of Justice in the seventeenth century was disfigured by barbarity and even savagery. In any estimate of the career of Jeffreys, therefore, this background must always be kept in mind.

The strength of Mr. Montgomery Hyde is that he is familiar with all the literature on the subject, contemporary and otherwise. The Diarists like Evelyn and Pepys, the historians like Burnet and Echard, the malignant effusions of Tutchin and Dunton, the inventions and distortions of a Macaulay—all are examined and appraised with complete impartiality. Particularly valuable are the new sources to which he has had access. All these things combine to create an interest far

transcending that of the mere lawyer. The Lord Chancellor of 1685 is an interesting figure to the lawyer, but within four years of that date the man who made men tremble before him is himself a fugitive, hiding in disguise from those who were intent on his destruction ; and the final picture is that of a defeated and broken prisoner in the Tower of London, universally execrated and saved from the most horrible fate by the intervening hand of death. This is the mutability of human affairs indeed. The reasons for this dramatic change are given by Mr. Montgomery Hyde with great insight and judgment and they are a part of English history.

But to the ordinary reader the name of Jeffreys will always be linked with the Western Circuit of 1685—"The Bloody Assizes"—and nothing that can now be done or said will alter the verdict mankind has passed. Perhaps the permanent value of Mr. Montgomery Hyde's book is that he brings the mind of a scholar, the erudition of the historian, and the dispassionate view of the trained lawyer to the examination of this central and highly controversial event in the life of Judge Jeffreys. There can be little doubt that Jeffreys has suffered considerable injustice in the last two and a half centuries. It is now perhaps too late to remove it. The pen of a Macaulay is not easily overtaken, and the grin that Macaulay put on the face of Jeffreys when the Assize preacher spoke of mercy in his sermon at Dorset is not easily removed. Even in the extremity of bodily weakness in the Tower, Jeffreys himself recorded his hope that he might have had strength to vindicate himself if he had been called to account.

To attempt to remove the indelible stain that rests upon the name of Jeffreys may be an impossible task. When all allowances are made he must stand condemned at the bar of history ; but it is altogether right and proper that those charges that cannot be sustained shall be dismissed, that the bias and malice of enemies shall be exposed, that the errors of historians shall be corrected, that the good qualities of Jeffreys shall not be forgotten, and as far as possible a just and faithful estimate of his life and work shall be made. Mr. Montgomery

Hyde has addressed himself to this task with great devotion and has rendered a great service by the writing of this book.

I hope and believe that this new edition will enlarge the success of the original publication to the lasting pleasure of all who read it.

EDUCATION

IF there is one name which is more hated than any other in English history and which has been made to stink in the nostrils of his fellow-countrymen, it is that of George, Baron Jeffreys, commonly known as Judge Jeffreys. Every schoolboy remembers this name, whatever else he forgets, and it is almost invariably recalled with feelings of disgust and loathing. It is that of a double-dyed villain and bloodthirsty ruffian, if ever there was one. "The depravity of this man has passed into a proverb." Thus wrote Macaulay in his *History of England*.

Both the great English parties have attacked his memory with emulous violence: for the Whigs considered him as their most barbarous enemy; and the Tories found it convenient to throw on him the blame of all the crimes which had sullied their triumph. A diligent and candid inquiry will show that some frightful stories which have been told concerning him are false or exaggerated. Yet the dispassionate historian will be able to make very little deduction from the vast mass of infamy with which the memory of the wicked judge has been loaded.¹

Although the first part of this statement is true, Macaulay was unfortunately neither the accurate nor the dispassionate historian which he pretended to be. Otherwise, it is submitted, his verdict on Jeffreys' character and career would have been not wholly unfavourable, and the current opinion to-day of "the Judge" and his works would be rather different. In Macaulay's estimation, which has been reflected in so many history text-books, Jeffreys appears as "the most consummate bully ever known in his profession," while "the profusion of maledictions and vituperative epithets which composed his vocabulary could hardly have been rivalled in the fish-market or the bear-garden." The basest possible qualities gained for him "an unenviable immortality." He was coarse, brutal, and corrupt, he delighted in cruelty and blood-lust, and his public conduct fitted him more properly for the gallows than the bench. His activities as the presiding

¹ *History of England*, ed. Firth, i, 444.

judge in the Bloody Assize court at once consigned him for ever to the outer darkness. These strictures were echoed by Macaulay's contemporary Lord Campbell, who in his *Lives of the Lord Chancellors* embarked upon a study of Jeffreys' career in the hope of discovering that his misdeeds had been exaggerated, but regretfully came to the conclusion that "his cruelty and his political profligacy have not been sufficiently exposed or repudiated, and that he was not redeemed from his vices by one single solid virtue."¹

As a matter of fact, Jeffreys has escaped comparatively lightly at the hands of Macaulay and Campbell, compared with what he suffered from previous writers. For more than a century after his death Judge Jeffreys provided a topic which no author or commentator on public affairs could be trusted to treat with either restraint or reason. Once the detested name of Jeffreys was mentioned indignation knew no bounds. Sir Michael Foster, a judge of the King's Bench in the eighteenth century, described him as "the very worst judge that ever disgraced Westminster Hall." The learned compilers of Burke's *Peerage* were ashamed to give his pedigree in the earlier editions of their work, on the ground, apparently, that "the conduct of this monster in ermine has rendered his memory justly odious, and made his name the most opprobrious epithet by which the bench can be assailed."² Edward Foss shrank from the task of giving any account of his life in his *Judges of England*, "because," as he said, "its disgusting details are so generally known that the relation of them can be but a repulsive repetition."³ Even Jeffreys' first biographer and in a sense panegyrist, Serjeant Woolrych, prayed heaven that whoever ventured to make him a pattern might be speedily hanged or beheaded, and expressed satisfaction that with the death of the Judge's only surviving son in 1702 the direct male line, as he puts it, became "happily extinct." But perhaps the palm goes to Henry Roscoe for his observations in his *Lives of Eminent British Lawyers*, a work which enjoyed a considerable popularity in the earlier part of last century, and is still sometimes quoted as an authority. "It is a salutary lesson," says this writer,

to see the memory of Jeffreys descending to posterity darkened with the indignant reproaches of each succeeding age, and

¹ iii, 495.

² *Extinct Peerage* (1931), p. 290.

³ vii, 226.

weighed down by an ever-increasing weight of infamy. To affix to his polluted name an additional stigma, to brand his dishonoured memory with a fresh mark of reprobation, is an office grateful to humanity.¹

Such comments as these are to-day both out of date and out of taste. The business of the historian is to ascertain and to present the true facts in so far as they can be verified, and not to repeat the errors and abuses of previous writers. He must not, on the other hand, have recourse to a pot of literary white-wash. In the case of Judge Jeffreys the task is not an easy one, and it is perhaps by no means surprising that so few authors should have made the attempt. Among them must be mentioned the late Lord Birkenhead, who, in a brilliant but all too brief essay on Jeffreys in his *Fourteen English Judges* (1926), was the first authoritative writer to draw the attention of the general public to Jeffreys' merits as a lawyer. A rather larger canvas than that of Lord Birkenhead is required, however, if a tolerably complete picture is to be produced. It is hoped that the reader will find it in the following pages.

II

Contrary to the opinion spread by his enemies that he was a person of low birth, Judge Jeffreys² came of an old Welsh family which had been in possession of estates in Denbighshire for many generations. His great-grandfather, Geoffrey ap Hugh, claimed to be eighteenth in descent from the famous chieftain Tudor Trevor, lord of Hereford and lineal descendant of Cadell, Prince of Powis and one of the early Welsh kings. Although the Welsh are not as a rule given to understatement in genealogical matters, it must be admitted that a fully recorded pedigree in the College of Heralds testifies to this illustrious ancestry.³ The family's principal estate, called Acton, was situated near

¹ *Op. cit.*, p. 135 (Lardner, *Cyclopadia*, 1830).

² The name has been spelled in eight different ways—Jeffries, Jefferies, Jefferys, Jeffereys, Jefferyes, Jeffrys, Jeffryes, and Jeffreys—and he himself spelled it differently at different times in his life. The last spelling is that which is found in his patent of peerage, and as he always used it thereafter it is the form which has been adopted throughout this book.

³ Philip Yorke, *The Royal Tribes of Wales*, ed. Williams (1887); Burke, *Landed Gentry*, 1937; Burke, *Extinct Peerage* (1866), p. 297. Two manuscript pedigrees, compiled for Jeffreys about 1681, probably when he was created a baronet, are now the property of Miss M. Melville Balfour, to whom I am indebted for permission to see them and other Jeffreys manuscripts in her possession.

Wrexham, and took its name from the neighbouring township, of which it comprised the greater part.

Geoffrey ap Hugh's son John, who was the grandfather of Judge Jeffreys, seems to have been the first member of the family to use the surname of Jeffreys. He also contrived to make the surname known as that of a successful lawyer. John Jeffreys was admitted a member of Lincoln's Inn in 1587, and speedily made his way at the local Welsh Bar. In 1608 James I appointed him King's Attorney for the counties of Chester, Flint, Anglesey, Carnarvon, and Merioneth. Ten years later he became a puisne judge of the Anglesey, or North Wales, Circuit. He had previously been elected a Bencher of his Inn, where he is also stated to have held the office of Reader. In his will he very properly bequeathed to the Masters of the Bench of Lincoln's Inn his "best guilt salt," to be used at the Bench table as a token that he did not forget that honourable society in which he had had his education.¹ At his death he also held the office in Lincoln's Inn of Keeper of the Records, or "Black Books," as they were called.

The successful judge of the Anglesey Circuit further expressed the desire in his last testament that his widow, to whom he gave half of his personal estate as "being due to her by the custom of the country," and his eldest son, John, on his coming of age, would be good to their tenants. He died in 1622, being possessed at this time of estates to the amount of eight hundred acres of land, including Acton Park. Shortly afterwards his widow married another well-to-do lawyer, Sir Thomas Ireland, who owned the estate of Beausay, near Warrington. Her son, also John, who was fourteen years old at the time of his father's death, went to live with them. Sir Thomas Ireland (he had recently been knighted by James I on the occasion of that monarch's spending a night at his house) had been twice married before, and by one of his former wives he had a daughter called Margaret. What could be more natural than that she should fall in love with young John Jeffreys, who had come to live with them? So it fell out, and soon after his com-

¹ W. R. Williams, *The History of the Great Sessions in Wales* (1899), p. 93; A. V. Palmer, *History of the Thirteen Country Townships of Wrexham* (1903), p. 169 (gives pedigree of Jeffreys of Acton); H. E. Forrest, *A History of the Forrest Family of Birmingham and Shrewsbury, with their Connections with the Miller, Vaux, and Jeffreys Families* (1923), p. 9.

ing of age they were married and went to live at Acton Park. This estate was situated about a mile and a half to the north of Wrexham. The house lay, surrounded by trees, on a small hill, whence the visitor could see the impressive Gothic spire of Wrexham's parish church peeping through the trees, with glimpses of the magnificent countryside which lay beyond.

John Jeffreys brought his bride to Acton about 1631, and there they settled down to managing the family estates and bringing up a large brood of children.¹ For the next fifteen years these children appeared at intervals of about eighteen months. The times were not easy, for they covered the period of the Civil War, when families were divided and their members sometimes fought on opposing sides. Nevertheless, John Jeffreys did his best for his family; he gave all his sons a good education, and at the close of his own life, many years later, he placed on record his solicitude for his children. "I bless God," he wrote then, "I always studied the welfare and happiness of my children and therefore was never guilty of an unjust act to them."² His eldest child, Margaret, was born about 1632, and she was followed, apparently, by another daughter two years later. Then there came a succession of sons: John, Edward, Thomas, Charles, William, George, and James. Curiously enough, the father outlived most of his children, dying in 1691 at the ripe age of eighty-four, and having seen his sixth son, George, become Lord Chancellor of England and the best-hated man in the realm.

Besides his estate of Acton Park, John Jeffreys inherited the lands of Ryton, to the south of Wrexham, and he also acquired some property in the neighbourhood of Shrewsbury. In 1638 that borough received a new charter of incorporation from King Charles I, with a mayor, aldermen, and Common Council.³ John Jeffreys' name appears in the first list of the Common Council, and thenceforward he took a keen interest in the

¹ S. Garbet, in his *History of Wem* (1818), p. 87, says that John Jeffreys was a silk-weaver, "and in that business had acquired an estate of about £500 per annum," but the Rev. J. B. Blakeway, the historian of Shrewsbury and a reliable authority, doubts this. "It is at least certain," Blakeway writes, "that the Chancellor was of a good family who had long been in possession of Acton." See Western MSS. (Bodleian) 22106, f. 49, which contains Blakeway's annotations to Garbet's work.

² John Jeffreys to his daughter-in-law, Mrs Margaret Jeffreys, January 18, 1690 (Jeffreys MSS.).

³ H. Owen and J. B. Blakeway, *A History of Shrewsbury* (1825), i, 409.

affairs of the town. At the outset of the Civil War Shrewsbury became the Royalist headquarters in Wales, with a mint and printing press of their own, and John Jeffreys must have witnessed many stirring scenes there. It was to Shrewsbury that the King came in 1642 immediately after setting up his standard at Nottingham, and his Majesty stayed in the Council House, where he made a pathetic appeal to the gentry and freeholders for help with men and money. He also visited Chester and Wrexham, where he pleaded his cause and met with some encouraging response. John Jeffreys probably helped with money and plate, while his younger brother, Edward, joined the Royalist forces, and fought in the campaign with the rank of captain. In any case, John soon found his income curtailed, and it has been suggested that his estates were later sequestered for a time, since Cromwell's commissioners were known to have sat at Wrexham and inquired into the records of neighbouring landowners.¹

Meanwhile Charles's army mustered in Shrewsbury, and John Jeffreys no doubt shared in the general inconvenience of providing free quarters for an undisciplined soldiery. A council of war was held in the school library in April 1643, and the headmaster, Thomas Chaloner, who was a friend of Jeffreys, complained that as a result of this session one valuable book was stolen and another "baseley torne by the sacrilegious fingers of a scotch camp chaplain." Indeed, the conduct of the troops gave great offence to the civilians in the neighbourhood, where we learn that the Cavaliers, among other enormities, "ravished the wife of a very discreet, moderate, able and godly minister in Shropshire."²

Early in 1645 Shrewsbury fell to the Parliamentarians as the result of a surprise night attack, and, although the town was not sacked, owing to the presence of a 'fifth column' of Roundheads, Royalist sympathizers, such as John Jeffreys, deemed it prudent to retire and remain inconspicuous for a time, if, indeed, they had escaped arrest. Thomas Chaloner, for example, "was stripped of all I had and cast out to the crows."³ No doubt

¹ The name of John Jeffreys does not, however, appear in the list of Denbighshire delinquents whose estates were held in sequestration in 1654 (State Papers, 23/145).

² J. R. Phillips, *Memoirs of the Civil War in Wales* (second edition, 1878), p. 119.

³ *History of Shrewsbury School* (1889), p. 106.

John Jeffreys wished to be with his wife, who was expecting another child. It was rather less than two months after the fall of Shrewsbury that their sixth son, George, was born at Acton Park.¹ Owing to the loss of the contemporary registers of both Wrexham parish church and the neighbouring church at Gresford, at either of which the child is likely to have been baptized, the exact date of his birth has hitherto been a matter of conjecture. Previous biographical accounts usually give it as 1648. New records have, however, come to light, and these establish beyond doubt that George Jeffreys was born on May 15, 1645.²

Chaloner, the expelled headmaster of Shrewsbury School, set up school in a number of other places near by, finally settling at Overton, some ten miles from Wrexham. Hither John Jeffreys sent three of his sons—John, Thomas, and William. This establishment came to an end in 1652, and Jeffreys, no doubt on Chaloner's advice, determined to send the three boys to the grammar school at Shrewsbury, together with George and the second son, Edward. They were all entered accordingly on the same day, November 17, 1652, John paying as entrance fee 3s. 4d. as the "eldest son of a gentleman," while his younger brothers paid 2s. 6d. each.³

The grammar school was housed in the old building in the town now used as a library and museum. During the next seven years which George Jeffreys spent there no record of his

¹ J. Evans, *Beauties of England and Wales* (1812), xvii, Part I, p. 603; T. Nicholas, *Annals of the Counties and County Families of Wales* (second edition, 1875), i, 371; *Notes and Queries*, First Series (1853), vii, 45-46; *Times Lit. Supp.*, August 1, 1929 (letter from Mrs M. C. Balfour).

² Blakeway Papers (Bodleian). The date is supported by Jeffreys' known entry at Shrewsbury School in 1652, and also by the fact that his father, when he signed the Shrewsbury burgess roll in June 1654, gave his son's age as ten—i.e., in his tenth year. See below, p. 20, note 2. Blakeway gives this date, together with other biographical details, which he states (in Western MSS., 22108, ff. 276-278) to be "on the authority of a valuable manuscript in the library at Stowe." I have been unable to discover this manuscript, since it is not in the Stowe Collection in the British Museum. It may possibly have been the work of the Rev. Mark Noble, a bibliophile who edited Granger's *Biographical History of England from the Revolution* (1806), and who mentions (i, 104 n.) that he possessed "in manuscript the history of the Chancellor Jeffries, with an account of his family written by myself." Noble's library, including, apparently, this manuscript, was sold by auction in 1827. (See the *Gentleman's Magazine*, March 1828, p. 252, and *Dict. Nat. Biog.*, xli, 82.)

³ Forrest, *op. cit.*, p. 9; J. E. Auden, *Shrewsbury School Register, 1636 to 1664* (1917), p. 43; *History of Shrewsbury School*, p. 196. Charles, mentioned above (p. 17), died young.

doings has survived. William Wycherley, the great Restoration dramatist, is believed to have been his contemporary at the school, while Edward Lutwyche, a successful common lawyer who was subsequently raised to the bench, was certainly there at the same time as Jeffreys. That the young Jeffreys showed signs of ability we have on the authority of the Nonconformist divine and diarist Philip Henry, well known for his graphic description of the execution of King Charles I. At the request of the boy's mother, "a very pious good woman," Henry is said to have "examined him in his learning" when he was at Shrewsbury, and to have "commended his proficiency."¹ His schooling here probably cost his father very little, for John Jeffreys was sworn a burgess of the town in 1654, and this conveyed the right of free education for his sons at the grammar school.² This privilege was doubtless not unwelcome to the father, for, if his estates had not actually been sequestrated, the Civil War must have seriously impoverished him.

Fortunately for Jeffreys' family, there were better times ahead. In 1655 John Jeffreys was elected High Sheriff of Denbighshire, and this would seem to show that he had made his peace with the authorities.³ For young George in particular it ensured an education becoming a gentleman and entry in due course to the university and an Inn of Court.

III

In 1659 George Jeffreys was removed by his father from Shrewsbury and sent to London, where he was entered at St Paul's School. This establishment, which had been founded by Dean Colet in the reign of Henry VII, was, before the Great Fire destroyed it, housed in a magnificent Gothic structure close to the Cathedral. The antiquarian John Strype, who was also educated there at this time, has left a good description of it. "The school house," he writes,

is large and spacious, fronting the street on the east of St Paul's Cathedral. It consisteth of eight classes, or forms; in the first

¹ Matthew Henry, *Life of the Rev. Philip Henry*, ed. Williams (1825), p. 150.

² H. E. Forrest, *Shrewsbury Burgess Roll* (1924), pp. v, 162; also information communicated by Mr J. F. Prideaux, Town Clerk of Shrewsbury. The entry in the burgess roll reads, "9th June 1654. John Jeffreys of S[hrewsbury], Esq., son of John Jeffreys of Acton, County Denbigh, Esq.; i[ssue], Margaret 22, John 18, Edward 16, Thomas 14, William 12, George 10, James 7."

³ *Archeologica Cambrensis*, Third Series, xv, 114.

whereof children learn their rudiments; and so, according to their proficiency, are advanced unto the other forms till they rise to the eighth. Whence, being commonly made good orators and poets, well instructed in Latin, Greek, and Hebrew, and sometimes in other Oriental languages, they remove to the universities.

The main schoolroom was embellished by the pious founder with appropriate inscriptions in Latin urging the scholars either to learn or be gone, "which I remember," says Strype, "the upper master in my time used often to inculcate upon such scholars as were idle and negligent." At one end of the room, facing the door, "was a decent Cathedra, or Chair, placed somewhat advanced for the High Master to sit in when he pleased and dictate there."¹ Into these excellent academic surroundings George Jeffreys was introduced at the age of fourteen.

The diarist Samuel Pepys, himself an Old Pauline, remarks:

Here they tell me that in Dr Colett's will he says that he would have a master found for the school that hath good skill in Latin and (if it could be) one that had some knowledge of the Greeke; so little was Greeke known here at that time.

In Jeffreys' time the headmaster, or High Master, as he was called, was a certain Samuel Cromleholme, who had the reputation of being a brilliant linguist and a sound, if pedantic, scholar. He possessed "an incomparable library," Strype tells us, "for he was very curious in books." Pepys, who calls him "Mr Crumlum," is not, however, quite so complimentary. "Lord!" he writes in his diary, "to see how ridiculous a conceited pedagogue he is, though a learned man, he being so dogmaticall in all he do and says." He was also reputed to have a liking for the bottle, which made him "a little impertinent," and he grew more so, according to Mr Pepys,

when after all he would in the evening go forth with us and give us a bottle of wine abroad, and at the tavern met with an acquaintance of his that did occasion impertinent discourse, that though I honour the man, and he do declare abundance of learning and work, yet I confess my opinion is much lessened of him, and therefore let it be a caution to myself not to love drink, since it has such an effect upon others of greater worth in my own esteem.

¹ R. B. Gardiner, *The Admission Registers of St Paul's School* (1884), p. 51; J. Stow, *Survey of London*, ed. J. Strype (1720), i, 164.

What concerned the worthy diarist even more was the apparent plight of the pedagogue's wife, for after Mr Pepys had sat "a great while talking" with them one day he observed her to be "a pretty woman, never yet with child, and methinks looks as if her mouth watered now and then upon some of her boys."¹

Whether George Jeffreys gained any particular favours or rewards at the hands of either Mr Cromleholme or his pretty wife we are not aware. He was no doubt quite happy under their care, for they are said to have received new pupils kindly and looked after them well. "Sweetheart," Mr Cromleholme would say to his wife, "you must take this child as mine and yours." Then, after the company, including apparently the new pupil, had had a glass or two of ale, the Master would lay his hand on the boy's head and bless him, saying, "The Lord God Almighty bless thee, and not only give thee wisdom and learning, but his grace also."² We know for certain that Jeffreys "applied himself with considerable diligence to Greek and Latin," and that he attended, and probably himself participated in, the annual debating contests at the school, which were frequented by many Old Paulines and others, including Samuel Pepys, who, in the manner of *alumni*, used to declare his opinion that the boys "did not answer in any so well as we did, only in geography they did pretty well."³ An additional reason for Mr Secretary Pepys's frequent visits to the school was the presence there of his younger brother John, who was a pupil. Among Jeffreys' other schoolfellows may be mentioned John Strype, later to become the well-known historian and antiquarian; John Balderstone, a future Vice-Chancellor of Cambridge University, and Benjamin Calamy, destined to be a Prebendary of St Paul's and a remarkable preacher against Nonconformity.

After two years' study under the shadow of Old St Paul's Jeffreys was removed to Westminster School. The reasons for this migration are not clear. Possibly from the boy's particular point of view it was considered a more advantageous institution through which to enter the university. It was, too, more a home of Royalism than St Paul's, and with the coming of the

¹ Pepys, *Diary*, ed. H. Wheatley (1893-99), iv, 33; iii, 368-369; ii, 399; iii, 119.

² Quoted by A. Bryant in *The England of Charles II* (1934), p. 65.

³ Pepys, iii, 31.

Restoration its sympathies in this direction became clearly pronounced. Little is actually known of Jeffreys' residence at this school, but in later years he used to refer to a dream which he had soon after his arrival and in which a gipsy read his fortune, foretelling that "he should be the chief scholar there, and should afterward enrich himself by study and industry, and that he should come to be the second man in the kingdom, but in conclusion should fall into disgrace and misery."¹

For nearly a quarter of a century Westminster School had been under the "awful reign" of Dr Richard Busby, celebrated for the frequency and severity of his floggings. This pedagogue, who combined a remarkable erudition and piety with the infliction of terrifying physical chastisements, used to declare that his rod was his sieve, and whosoever could not pass through that was not the boy for him. Like Mr Cromleholme of St Paul's, he had an astonishing library for these times, for it included an Arabic version of the propositions of Euclid and the first edition of the Bible in the dialect of the Massachusetts Indians, both of which tongues were known to him. He was also a conscientious grammarian, and he brought out a number of editions of the classics with the pious object of enabling his pupils to imbibe the beauties without being polluted by the impurities of the ancients. Under his editorial guidance, for instance, George Jeffreys read Juvenal's *Satires* and Martial's *Epigrams*, carefully purged of all indecent passages.²

The scholastic curriculum at Westminster was similar to that at St Paul's, except that Lily's *Latin Grammar*, and Camden's *Greek Grammar* were discarded in favour of text-books of the headmaster's own composition. The range of reading was wide, and included also an edition by Dr Busby of the Athenian grammarian Apollodorus's then little-known treatise on mythology. The time devoted to classical studies was considerable, since Dr Busby believed that they provided the best training. Of them Jeffreys learned a good deal, and he never forgot his indebtedness to his teacher, for years later when on the bench and construing a loosely drawn indictment he repeated the rule of grammar that the relative must refer to the last antecedent, "or else Dr Busby (that so long ruled in

¹ Campbell, iii, 499.

² John Sargeant, *Annals of Westminster School* (1898), Chapters VI, VII.

Westminster School) taught me quite wrong.”¹ Indeed, Jeffreys frequently remembered his old school in after-years; for instance, in 1687, when he was Lord Chancellor, we find him presenting the sum of twelve pounds as a “charitable gift to the Dean and Chapter of Westminster for the education of two poore schollers at the schoole in Westminster.”²

John Evelyn, the diarist, who was present at the summer examinations for election to the universities in 1661, in which Jeffreys probably took part, confessed his astonishment at “such readiness and wit” on the part of young lads scarcely in their teens, making “themes and extemporary verses” in the ancient tongues.³ To them all other subjects were subordinate, including geography, to which only an hour daily was devoted in the summer-time, when the pupils would be called up to the headmaster’s chamber “and there instructed out of Hunter’s *Cosmographia* and practised to describe and find out cities and counties in the mappes.” Arithmetic and geometry were, of course, taught through the medium of Latin. The need for a knowledge of colloquial Latin had long before resulted in the acting of the plays of Plautus and Terence, and that Jeffreys took an interest in these performances we know from the fact that he pleaded for the town boys, in preference to scholars on the foundation, to be permitted a more active participation than they had enjoyed hitherto.⁴ Athletic pursuits, on the other hand, were not so regularly attended to, and the hours of play, sometimes condemned as “loitering,” were certainly brief. But recreation on certain days was not denied, notably on Shrove Tuesday, when, in accordance with the famous medieval custom which is still observed, the college cook tossed a pancake over a bar in the schoolroom to the assembled scholars, and he who succeeded in carrying it off whole, or nearest whole, claimed a guinea from the Dean.

Under the Elizabethan statute a limited number of boys from Westminster were entitled, if duly qualified, to be elected scholars of Trinity College, Cambridge, which then, as now, formed the largest society in that university. For many years relations between the two foundations had been of an intimate

¹ T. B. Howell, *State Trials*, x, 299.

² The receipt, dated January 17, 1686/87, is in the possession of Miss M. Melville Balfour.

³ Evelyn, *Diary*, ed. Dobson (1906), ii, 169.

⁴ Sargeaunt, *op. cit.*, p. 153.

character, so that when it came to making arrangements for the young Jeffreys to go up to Cambridge it was quite natural that the choice should fall upon Trinity. Accordingly, on March 15, 1662, he was admitted a pensioner of that foundation, although there is no record of his having matriculated; and he was able to enjoy a status which gave him some privileges in respect of fees and residence.¹

As with his schooldays, we know practically nothing of Jeffreys' career at Cambridge, beyond that it was brief and that he left the university a year after his admission without having taken a degree. Dr John Pearson, a distinguished divine, and probably the ablest scholar of the seventeenth century in England, was elected to the Mastership of Trinity about the time Jeffreys became an undergraduate, and he may have had something to do with Jeffreys going up to that college, since he was one of the examiners whom Evelyn noticed on the occasion of his visit to Westminster in the previous year. The college was rich in scholarship, since it also boasted among its Fellows the erudite Isaac Barrow, Professor of Mathematics in the university. Barrow's most famous pupil was a contemporary undergraduate of Jeffreys' at Trinity, called Isaac Newton, destined to become famous as a scientist and the author of the modern theory of gravitation.² But while the young Newton was making remarkable use of his undergraduate time by discovering the binomial theorem Jeffreys was turning his thoughts to a choice of profession. The successful career of his grandfather John Jeffreys as a Welsh judge, besides his own inclination, pointed to the Bar.

There is a story that his father, who is reported to have remarked certain signs of intemperance in the young man which he considered that the barrister's profession would in no way diminish, endeavoured to persuade him to follow a calling where the temptations in this respect would be less dangerous. After some argument the old man is said to have been won over and given his consent, adding, however, some words which were curiously prophetic: "Ah, George, George, I fear thou wilt die with thy shoes and stockings on!"³

¹ W. W. R. Ball and J. A. Venn, *Admissions to Trinity College, Cambridge* (1911), ii, 463.

² Ball, *Trinity College, Cambridge* (1906), p. 77.

³ Campbell, iii, 498.

IV

On May 19, 1663, George Jeffreys was admitted a member of the Honourable Society of the Inner Temple.¹ His cousin and neighbour in Denbighshire, John Trevor, had recently become a barrister of the Inn, and this fact no doubt influenced Jeffreys' choice of this Society. Here with great energy he began his legal studies. Fortunately he had an excellent head for law, and he had no difficulty in digesting the prescribed textbooks of that day. He also appeared with credit at the moots—occasions when a given legal proposition was argued by barristers and students in the hall of the Inn. He also took, as we shall see, an active part in the corporate life of the Society. Life at an Inn of Court in the seventeenth century was not unlike life at an Oxford or Cambridge college to-day, where the students dine in Hall and live on the premises, and, generally speaking, do as little or as much work as they please. Like many a modern student, too, Jeffreys is said to have been in a state of continual financial embarrassment, as he is reported to have had only forty pounds a year on which to live. However, he seems to have been able to obtain a liberal supply of credit whenever he required it, principally in the taverns hard by the Temple, which he frequented regularly.

Jeffreys' studentship in the Temple coincided with several famous episodes in the life of the Metropolis, notably the Plague and the Great Fire. There is a story which credits Jeffreys with putting the former to his advantage in a remarkable manner. Though still a student, he is said to have attended Kingston Assizes in 1666 in the guise of a fully fledged barrister, and, what is more, to have been entrusted with briefs because of the dearth, caused by the Plague, of regular counsel practising on that circuit. Furthermore, he is said to have pleaded with consummate brilliance for a stripling and to have earned the plaudits of onlookers in court. Although this exploit, if it be true, is fully in keeping with the boisterous and flamboyant qualities which the young man's character was beginning to develop, it must be admitted that substantial evidence is lacking, and the incident may well be purely imaginary.²

¹ J. B. Williamson, *History of the Temple* (1924), p. 590.

² H. W. Woolrych, *Memoirs of the Life of Judge Jeffreys* (1827), p. 16.

Besides the Great Fire, which consumed about half the buildings in the Inner Temple, the members were further threatened by the appearance in the Thames of the Dutch fleet, which burned two warships. It was thought that the Temple might also be singled out for attack, and a strict watch was accordingly kept. But young Jeffreys did not allow these distractions to divert him from his course of study, nor prevent him from conforming to the regulations of the Inn. At the same time he made some acquaintances which were likely to prove useful in the upper ranks of society. His manners and appearance were prepossessing, and he received numerous invitations to dinner. Such occasions as a rule provide opportunities which are eagerly grasped at by every young man with his way to make in the world. They were not lost upon George Jeffreys.

During his student years at the Inner Temple he was continually in debt, and to repair his fortunes he not unwisely determined to marry an heiress. Accordingly he began to pay court surreptitiously to the daughter of a wealthy country gentleman, to whose house he was in the habit of being invited. The young lady was carefully guarded, but she had a poor cousin, who enjoyed the post of companion in the household. Jeffreys lost no time in taking the companion into his confidence and employing her as an intermediary through whom he might profitably press his suit. The companion, whose name was Sarah Neesham, used to carry letters between the two lovers, and all went well up to the point when her mistress agreed to elope with her handsome young law student should she not be able to obtain her father's consent to their proposed union. Unfortunately at this moment the clandestine correspondence was discovered by the father; the daughter was locked up in her room, and the companion sent away. Poor Sarah Neesham in despair took shelter in the house of a friend in Holborn. She immediately sent an agonizing note to Jeffreys acquainting him with what had happened. He came to see her at once, and found her in tears. He looked at her closely, and it was suddenly borne in upon him that she was considerably better-looking than her rich relative. After all, too, he had more or less ruined her prospects in life, and so he decided to make all the amends within his power. He proposed, and, not altogether to his surprise, he was accepted.

Sarah Neesham was twenty-three years of age, and was, in fact, a few months older than her betrothed.¹ Her father, the Rev. Thomas Neesham, had been rector of Stoke d'Abernon from 1629 to his death in 1661, but as the living is stated to have been worth no more than £150 a year we must assume that he was of a thrifty disposition, since he left his daughter Sarah a dowry of £300.² Though she was not the heiress of the student's dreams, no doubt her modest marriage portion was acceptable. Some of it must have been spent in fitting up the house which Jeffreys took for himself and his future bride near the Guildhall, in Coleman Street.³

The preparations for the wedding were hurried forward, and the ceremony eventually took place just a week after the bridegroom's twenty-second birthday. On May 23, 1667, at All-hallows Church, Barking (near Tower Hill), George Jeffreys, "of the Inner Temple, Esq.," and Sarah Neesham, spinster, became man and wife.⁴ They moved into their new home in the City, and there seem to have found great happiness together. It was not long before Mistress Jeffreys was able to announce the glad news that she expected to become a mother.

Before them lay eleven years of unclouded bliss and the domestic joy of children and a thriving household. For Jeffreys they were the brightest years of his life. Years later, long after Sarah's death and when Jeffreys himself lay dying, he remembered her with tenderness, and in his will expressed the desire to be buried "as near as may be to my former wife and children."

¹ She was baptized in Stoke d'Abernon Church on October 31, 1644.

² J. and J. A. Venn, *Alumni Cantabrigienses* (1922), Part I, iii, 242; O. Manning and W. Bray, *Surrey* (1804), ii, 719 *et seq.*

³ Believed to be No. 79. In the Guildhall Library there are two sketches of this house, which was plaster-fronted and had overhanging upper storeys, timber-framed. The house must therefore have dated from before the Great Fire, since this type was forbidden after it. (Information communicated by Miss M. Melville Balfour.)

⁴ Campbell, iii, 505. Campbell gives as his authority for this statement the Allhallows Church register, but it should be noted that the register as it exists to-day contains no reference to the marriage.

COMMON SERJEANT

THE English legal system, which Jeffreys was now approaching professionally, was much more cumbersome in the middle of the seventeenth century than it is to-day. In particular, the criminal code, to which Jeffreys was to devote a great deal of his time and attention, was still extremely barbarous and ill-developed, and, in common with other branches of the law, it bristled with technicalities at every turn. One outcome of the Civil War had, it is true, been the permanent establishment in the country of trial by jury, but the trials of the Regicides, which occurred at the beginning of the Restoration, when Jeffreys was still a schoolboy at St Paul's, showed that this form of procedure could be quite as unfair as the arbitrary acts of the Court of Star Chamber, which had been condemned and abolished by the Long Parliament. To obtain the benefit of trial by jury the prisoner had to plead to the indictment—that is, he had to say whether he was guilty or not guilty of the offence with which he was charged. The fate of those who refused to plead was the painful one of being pressed to death by a heavy weight in a loathsome dungeon, but many accused preferred to suffer this so-called *peine forte et dure* rather than run the risk of forfeiting all their property and thus leaving their dependants penniless, which a conviction or a plea of guilty in many cases involved.¹

Procedure in criminal causes notoriously weighed hard upon the prisoner, while the rules of evidence were extremely loose. When he faced the court and jury his guilt rather than his innocence was presumed. Indictments were complicated documents drawn in Latin, and, although they might be upset, and in practice frequently were, by the accidental omission of a relatively unimportant word, prisoners were at a disadvantage in not being allowed to see a copy of the indictment either before or at their trial. A more serious grievance was that, since they were generally kept in close confinement till the day

¹ Sir James Stephen, *History of the Criminal Law* (1883), i, 369 *et seq.*; Sir William Holdsworth, *History of English Law* (1926), ix, 232 *et seq.*

of their trial, prisoners had no means of discovering what evidence had been collected and would be used against them. Similarly, it was difficult, and in many cases impossible, for them to consult with their legal advisers. Furthermore, the accused could not call witnesses on their behalf to be examined on oath, nor could they give evidence themselves. They were not permitted to have counsel in court to represent them except for the purpose of arguing points of law. These injustices impressed themselves upon Jeffreys' mind at an early age, and he was later to draw attention to them from the bench. "I think it is a hard case," he said at one of the State trials in 1684, "that a man should have Counsel to defend him for a twopenny trespass and his witnesses examined upon oath, but if he steal, commit murder or felony, nay high treason, when life, estate, honour are concerned, he shall neither have Counsel nor his witnesses examined upon oath."¹

In those days there was no general conception of the true nature of judicial evidence. Hearsay evidence and the uncorroborated evidence of accomplices were both admitted and acted upon. The opinion of the time seems to have been that if a man came and swore to anything he ought to be believed, unless he was directly and positively contradicted and shown to be lying. Since a single witness on the part of the prosecution was all that was necessary to secure a conviction (except in treason, where two were required), perjured testimony might, and frequently did, swear away innocent lives. Witnesses were not allowed to be discredited by cross-examination, and, although prisoners were permitted to question Crown witnesses, the effect of their cross-examination was considerably reduced. Indeed, the only effective cross-examining was done either by the Crown counsel or the judge, and this more often than not was aimed at discrediting the accused. It is true that prisoners were not actually tortured, as they were in most other countries in Europe at this time, but the long hours during which they had to stand shackled in court, often extending from early morning until well into the night, coupled with the loathsome conditions prevailing in the prisons, were often akin to torture.

The punishments inflicted by the law for various offences were equally barbarous. The penalty a commoner suffered for treason

¹ Howell, *State Trials*, x, 267.

was the revolting but time-honoured one of drawing, hanging, and quartering (peers were, by the royal clemency, beheaded) :

that he shall be led back again to the place from whence he came, and from thence shall be drawn upon a hurdle to the place of execution, and there shall be hanged by the neck, and then shall be cut down alive; and his entrails and privy members shall be cut from his body, and shall be burned in his sight, and his head shall be cut off, and his body shall be divided into four parts, and shall be disposed at the King's pleasure.¹

Most adjudged traitors who underwent this punishment were able so to arrange matters with the executioner that they were dead before their bodies were cut down, but there were undoubtedly occasions when the sentence was carried out with great clumsiness and barbarity. General Harrison, one of the Regicides who suffered in 1660 at Charing Cross, for instance, remained conscious while his bowels were cut out and thrown into the fire, and he even had sufficient strength left after witnessing this ghastly operation to raise himself and give the executioner a box on the ear.²

Women found guilty of treason were burned at the stake, as also were those convicted of witchcraft, of which there were not a few in the seventeenth century. A host of other offences were capital for both sexes, and they included many relatively minor ones, such as housebreaking, forgery, coining, sheep-stealing, and larceny of any article above the value of twelvepence. Nor could the penalties for misdemeanours be considered exactly lenient. An offender who drew a weapon in a churchyard lost an ear or was branded; if he was convicted of destroying cattle or crops he could be transported for seven years to a penal settlement overseas; while for the crime of petty larceny—that is, stealing anything of less value than twelvepence—the customary sentence was that the offender “shall be stripped from the waist upwards, tied to a cart, and whipped until his body shall bleed once, twice, or thrice, according to the discretion of the justices.”³ For all serious and numerous minor offences, however, there was but one penalty—death, with confiscation of property. Insomuch, also, as the medieval idea persisted that a criminal prosecution did not really begin until

¹ *Office of Clerk of Assize and Clerk of the Peace* (1682), p. 64.

² Howell, *State Trials*, v, 1237.

³ *Office of Clerk of Assize and Clerk of the Peace*, p. 183.

the accused had first been found suspect by a Grand Jury, any presumption of his innocence was speedily removed thereafter.

While minor offences and misdemeanours came before the various Quarter Sessions in every county, felonies and other more serious offences then, as now, were tried by virtue of a Royal Commission, or rather two Commissions, known as Gaol Delivery and Oyer and Terminer, which empowered his Majesty's judges to deliver the gaols of prisoners and to hear and determine all such offences committed within the county to which they were sent. For Middlesex and the City of London these trials took place at the dreaded Old Bailey, hard by the notorious Newgate Prison; elsewhere they were heard at the various assize towns on the six circuits which the judges customarily went. A certain amount of civil work on the common-law side was also heard on circuit, but the bulk of this came to Westminster Hall, where the three Courts of King's Bench, Exchequer Chamber, and Common Pleas sat in a mist of technicalities and dispensed a somewhat tardy justice between plaintiffs and defendants. Chancery suitors, on the other hand, filed their bills in Lincoln's Inn and sought what relief they could get in equity, that "roguish thing," as Selden described it, which varies with the length of the Chancellor's foot.¹

Students of the law were encouraged not only to 'abridge' in their notebooks the older cases reported by others, but also to go to the courts and report modern cases for themselves. Sometimes the judge would stop a case and explain points of law for their assistance. "I have known the Court of King's Bench," writes Roger North,

sitting every day from eight till twelve and the Lord Chief Justice Hale managing matters of law to all imaginable advantage to the students, and in that he took a pleasure or rather pride; he encouraged arguing when it was to the purpose and used to debate with counsel, so as the court might have been taken for an academy of sciences as well as the seat of justice.

This writer, however, advised students to frequent the Common Pleas in preference to the King's Bench, if they wished to absorb the common law. In the King's Bench

the causes of the Crown, corporations, matters of the peace and concerning the Government, take up most of that little time they

¹ *Table Talk*, ed. Reynolds (1892), xxxvii, 2.

allow which are more faction and wrangling than law. But at the Common Pleas there is little but merely matters of law agitated.

A student can, according to North, always find plenty of room in the Court of Common Pleas, whereas he may go to the King's Bench as early as six o'clock and yet not get a good place.¹

II

To these factors, which it is necessary to bear in mind in order to follow Jeffreys' career at the Bar, something may be added regarding the principal legal personalities of that day, with several of whom Jeffreys was later to come into active association. At the time of Jeffreys' call to the Bar there was no titular Lord Chancellor in office. Since the scholarly Earl of Clarendon's dismissal in the previous year the Great Seal had been in the charge of Sir Orlando Bridgeman, but with the inferior title of Lord Keeper. Bridgeman, an able if over-meticulous common lawyer and a cautious Royalist, who had presided at the trials of the Regicides, was not proving a conspicuous success in the Court of Chancery, of whose practice he knew very little. His health, never very good, was not improved by the intrigues of his wife and the vulgar behaviour of his sons, who practised in the same court, and for this and other reasons he was not destined to remain on the bench for very long. He refused to put the Seal to various instruments, including some grants designed for the King's mistresses, and these acts of disobedience resulted in his removal before Jeffreys had been at the Bar for more than a year or two. His place was taken as Lord Chancellor by Charles II's scheming and ambitious Minister, the newly created Earl of Shaftesbury, a member of the notorious Cabal, and a man who, whatever his political capabilities, had the demerit of knowing practically no law; indeed, he had not even been called to the Bar.

The record when we turn to the common-law side is rather more encouraging. Sir Matthew Hale, who was appointed Lord Chief Justice of the King's Bench about this time, combined a rigid Puritan outlook with a profound knowledge of the law in all its branches. It is said that for thirty-six years

¹ Roger North, *A Discourse on the Study of the Laws* (1824); quoted by Holdsworth, *History of English Law*, vi, 496-497.

he never missed attendance at church on Sunday, but in mere learning he was without a rival in his profession. His preface to Rolle's *Abridgement of the Common Law*, the leading text-book of the day, is still regarded as containing some of the most helpful advice ever addressed to a student of the law—advice which there is no doubt that the young Jeffreys took to heart. "It is necessary for him to observe a method in his reading and study," observed the Lord Chief Justice,

for let him assure himself, though his memory be never so good, he shall never be able to carry on a distinct, serviceable memory of all, or the greatest part he reads, without helps of use or method; yea, what he hath read seven years since will, without the help of method or reiterated use, be as new to him as if he had scarce ever read it. A method, therefore, is necessary, but various, according to every man's particular fancy.¹

The Lord Chief Justice's recorded judgments afford a fine example of his judicial wisdom. Yet, like many intensely religious people, he had some strong prejudices, one of which was his belief in witchcraft, to which he clung with an astonishing pertinacity. In the same month as Jeffreys went up to Cambridge, for instance, Hale tried at Bury St Edmunds assizes and caused to be executed two poor old women whom an ignorant jury had convicted at his direction of diabolical possession.²

Sir Heneage Finch, the Solicitor-General, did not share Hale's Puritan leanings, although, like the Lord Chief Justice, he did have a profound knowledge of the law. The magnificence of the banquet which he gave on being made Reader of the Inner Temple in the year following the Restoration was still being discussed when Jeffreys joined that learned Society, while his liberal daily consumption of wine at the Benchers' table set an example to many students of Cavalier inclinations.

A worthy and virtuous contemporary, destined to succeed Finch as a law officer, was Francis North, whose quaint biography from the pen of his brother Roger must be regarded as one of the minor classics of English literature. He was undoubtedly an able lawyer, and was said to be making £7000 a year at the Bar at this time, an exceptionally large income for

¹ H. Rolle, *Abridgement* (1668), p. 8.

² *Dict. Nat. Biog.*, xxiv, 19; Howell, *State Trials*, vi, 687.

those days. An excusable fraternal exaggeration of his domestic virtues unfortunately served to make him a slightly ridiculous personage in the eyes of both his contemporaries and posterity. "I was never absent from my brother in his retirements," wrote his biographer,

and I kept so close to him that I can safely say I saw him abed every night without intermission for divers years together, which enables me to contradict the malicious report a relation raised of him that he kept a mistress, as the mode of that time was.¹

Three other members of the Bar deserve brief mention—Pemberton, Scroggs, and Saunders. Francis Pemberton had a curious career. He was twice removed from the bench and twice imprisoned by the House of Commons, and yet lived to resume his practice in the courts. A dissipated pupillage landed him in the debtors' prison at an early age, and this gave him leisure to study the law, in which he became extremely well versed. For the times he was an honest man, and as a lawyer possessed a remarkably independent outlook.

Very different was the servile Sir William Scroggs, whose reputation in the field of judicial villainy was destined to be matched only by that of Jeffreys himself. A person of low birth—he was reputed to be "the son of a one-eyed butcher near Smithfield Bars, and his mother a big fat woman with a red face like an ale-wife"—he nevertheless succeeded in graduating from Oxford University, fighting for the Royalists in the Civil War, and quickly making his way at the Bar. "He was a great voluptuary and companion of the high court rakes," writes Roger North. "His debaucheries were egregious and his life loose, which made the Lord Chief Justice Hale detest him."² Yet Pepys thought he was "an excellent man," and the speech which he made on being elevated to the bench some years later was such a success that it was printed by royal command, and all the copies speedily sold out.

More remarkable in many ways than either Pemberton or Scroggs was Edmund Saunders, a master in the art of special pleading and one of the greatest our common-law system has known. His reports too are famous, and have been authoritatively described as the most perfect specimen of such work in

¹ North, *Lives*, ed. Jessopp (1890), iii, 90.

² *Ibid.*, i, 196.

our legal literature.¹ He rose literally from beggary, taught himself to write, and was at one time a copying clerk. His physical appearance was repulsive, and his body emitted a horrid stench, chiefly by reason of his drunken and gluttonous habits, "for, to say nothing of brandy," to quote Roger North again,

he was seldom without a pot of ale at his nose or near him. That exercise was all he used; the rest of his life was sitting at his desk or piping at home; and that home was a tailor's house in Butcher's Row, called his lodging, and the man's wife was his nurse or worse.

Nevertheless, although "he was a fetid mass that offended his neighbours at the Bar in the sharpest degree," he was one of the wittiest men in his profession, and in his time without doubt the most popular and likable.²

There were a number of other barristers with whom Jeffreys was to have dealings, notably Williams, Wallop, Pollexfen, Treby, Ward, and Maynard. The doyen of the Bar was old Serjeant Maynard, whose life covered almost the whole of the seventeenth century. In fact, he lived to congratulate William III in the name of the legal profession, and to the King's remark that he had outlived all the men of the law of his time he was to make the historic reply that "he had like to have outlived the law itself if his Highness had not come over."³

III

George Jeffreys was a student of the Inner Temple for five years, which was then the statutory period necessary before call to the Bar. In those days students were not required to sit for written examinations, but there were certain exercises in the shape of attending commons and moots and undergoing prescribed courses of reading which they had to discharge. All we know about Jeffreys in this connexion is that he duly fulfilled these requirements, and was properly called to the Bar on November 22, 1668.⁴ He then set about looking for work. In this quest he had the help and advice of his cousin Arthur

¹ J. M. Zane, in *Select Essays in Anglo-American Legal History* (1907), i, 705.

² North, *Lives*, i, 294.

³ Woolrych, p. 101.

⁴ *Calendar of Inner Temple Records*, iii, 59.

Trevor, who was now making his way at the Bar and who gave the young man the run of his chambers. But it seems likely that his own pushful abilities had more to do with his initial success than any species of family favouritism which may have come his way. For himself he acquired a handsome set of business chambers in King's Bench Walk—No. 3 South, on the first floor—and from the large premium which he paid to the outgoing tenant it would appear that he did not lack the confidence necessary to impress prospective clients.¹ He probably also used his house in Coleman Street for business as well as domestic purposes.

Under the rules governing the legal profession at that time barristers were not permitted to accept briefs in any of the superior courts which sat in Westminster Hall until three years had elapsed from the date of their call to the Bar. This restriction did not apply to other courts, so that Jeffreys made up his mind to concentrate on those in and about the City of London. For this purpose he was regularly to be seen at the Old Bailey, the Guildhall, and the Middlesex Sessions. Here his self-confident manner and powerful voice stood him in good stead alike with justices and with juries. He had, for instance, none of the diffidence of Roger North, who has confessed that his addressing the court on the occasion of his first brief was "a crisis like the loss of a maidenhead," and that it was a long time before he ventured to ask any witness a question.² As Serjeant Maynard used to say, "the law is *ars bablativa*, meaning that all the learning in the world will not set a man up in Bar practice without a faculty of a ready utterance of it."³ Although the subject of Jeffreys' first brief is unknown to us, we may be sure he was not abashed. Nor did he disdain to stoop to more questionable methods by which to gain clients. He used to drink with attorneys in taverns and coffee-houses, and, according to Roger North, was in the habit of instructing

¹ Jeffreys' chambers have been incorrectly stated by previous writers to have been in Hare Court. Miss M. Melville Balfour, in a most informative article in the *Law Journal* (lxviii (1929), 158, 170), has, with the aid of leases and other evidence, conclusively identified them with those still existing at No. 3, First Floor South, King's Bench Walk. According to a receipt dated February 2, 1669, in which the premises are described as "a Chamber one payre of stayres neere the Alienaçon Office in the Inner Temple," Jeffreys paid a premium or fine of £230.

² North, *Lives*, iii, 90.

³ Holdsworth, *History of English Law*, vi, 497.

his clerk to come at a given moment and say that company attended him at his chambers. He would then pretend to be annoyed: "Let them stay a little," he would reply; "I will come presently." Thus he made a show of business, which doubtless had its effect.¹

Jeffreys did not, however, forsake the corporate life which Benchers, barristers, and students shared in the Inner Temple; and shortly after being called to the Bar he figured in an incident at his Inn which is worth recording. Each term one of the Benchers was elected to the office of Reader, which, besides delivering lectures, or readings, involved the extension of hospitality in the shape of a feast to the other members of the Inn and also outside guests. The Lent Reader for 1669 was Master Christopher Goodfellow, and among the outside guests whom he invited to attend the Reader's Feast were the Lord Mayor of London, Sir William Turner, and some of the City Aldermen. The Temple had from earliest times declared itself to be extra-parochial and outside the jurisdiction of the City authorities, and the Templars further contended that the Lord Mayor had no right to bear his sword of office within their precincts, which would amount to the exercise of a royal control over them and their Society. On this occasion the Lord Mayor intimated his intention of coming in state with his officers and sword, whereupon Master Goodfellow dispatched two members of the Inn to remonstrate with him. One of these messengers was George Jeffreys, the other a barrister named Thomas Wroth, who has left an account of their peculiar mission.

"Accordingly," says Wroth,

we went to Guildhall, where, finding the Lord Mayor and Court of Aldermen sitting (a stately object for a curious eye), Mr Jeffreys brake the ice, and after a complimentary salute with the presentation of Mr Reader's respects to his lordship and the rest of his brethren, told him that Mr Reader (understanding his lordship did defer doing him and this House the honour as to dine with him upon the account of the dispute might arise about bearing up his sword) had sent us to advertise his lordship that the gentlemen (being at present persuaded by former precedents his lordship ought not to carry his sword erect within the boundaries of the Society) were resolved to stand upon their privileges, but

¹ North, *Lives*, i, 272-273.

hoped his lordship would not deny them that right, but grant them what justice his predecessors had done.¹

After this neat opening the deputation were rather abruptly requested to withdraw while the city fathers discussed among themselves what answer they should give. When they were readmitted Jeffreys and his companion were informed, somewhat to their amazement, that his lordship took it as "a high affront" that they "should come to accost him." Addressed again by Jeffreys in what seems to have been a tactful speech, the Lord Mayor remained obdurate and refused to abate any of his pretensions. He declared that he bore the King's sword, that London was his jurisdiction, and that the Temple was part of it. "My service to your Reader," he concluded; "tell him I will come and dine with him—I will bear up my sword and see who dares to take it down."

Such an answer courted trouble, and trouble indeed lay in store for the Lord Mayor and his retinue when they arrived at the Inner Temple. The students were in readiness, and as soon as they saw the City's sword held aloft they raised a tumult and beat it down. They also abused the Lord Mayor and his attendants and compelled him to take refuge in some private chambers. Here his lordship was obliged to remain for some hours. On first attempting to make his escape he was mobbed in the cloisters and driven back to his hiding-place. It was not until the students finally trooped off to the Reader's dinner that his lordship was able to emerge and make off furtively and dinnerless through the back entrance to the Guildhall.

The Lord Mayor appealed to the King, with the result that Jeffreys and the other youngsters principally concerned in the uproar were commanded to appear before the Privy Council. The Council, however, was not disposed either to decide against the Temple or to punish the ringleaders, and the upshot was that the King's pleasure was declared to be suspended in the case until the issue of jurisdiction should be tried in the courts. There the matter has rested, since no such action has ever been brought; no subsequent Lord Mayor was anxious to risk an adverse decision.

As a reward for their part in the affair we are informed that

¹ *Calendar of Inner Temple Records*, iii, 66-68.

Jeffreys and the other members concerned were entertained to supper by the Inn. The cost of this entertainment is stated to have been £3 18s. 4d.¹

IV

There is unfortunately no record of the cases which Jeffreys conducted in the first few years of his career at the Bar. Nor has his fee-book survived, so that we have no details of his professional earnings at this time. We do know, however, that Jeffreys never experienced that uneasy period of waiting for briefs which then, as now, was the lot of many a young barrister at the outset of his career. For Jeffreys briefs were not slow in coming, and for this blessing he had no doubt to thank the tavern connexions of his student days and other associations which he had been at pains to form in the City. A wealthy Alderman, who bore the same name as himself, became his particular patron. Alderman Jeffreys, known as "the great Smoaker" (because he lost twenty thousand pounds worth of tobacco in the Great Fire), took a great fancy to the young man and determined to push his interests with the Court of Aldermen.

Jeffreys was regularly to be seen appearing before the Lord Mayor at the Guildhall; he also practised both at Middlesex Sessions, which were then held in Hicks's Hall, in Clerkenwell, and at the Old Bailey Sessions, where he early set his heart on obtaining one of the judicial offices, either that of Recorder or that of Common Serjeant. "He was of bold aspect," it was said of him by an eyewitness, "and cared not for the countenance of any man." He had a powerful voice, too, which he was not afraid to use, an invaluable asset for a person in his position. He developed a remarkable aptitude for cross-examination, and it is said that he never spared any assertion which was likely to serve his clients. He has been blamed for bullying and brow-beating witnesses, but there is no reason for believing that Jeffreys was in any way unique in this practice, which in criminal matters at least was general throughout the seventeenth century. If he did take a blustering line with witnesses it must be admitted that he sometimes received as good as he

¹ *Calendar of Inner Temple Records*, iii, xxi n. No Lord Mayor of London has been officially within the precincts of the Inner Temple from 1668 until October 1939, when the then Lord Mayor inspected some troops and saw them march past (*The Times*, October 14, 1939).

gave. There is one story relating to these early days about a witness who had made out a complete case against Jeffreys' client. He was wearing a leather doublet, as affected by the artisan classes of the day. So Jeffreys, rising to cross-examine, addressed him as "you fellow in the leathern doublet," and asked him what he had been given as a bribe for his evidence.

"Truly, sir," replied the witness, "if you have no more for lying than I have for swearing, you might wear a leathern doublet as well as I."¹

It was a hard-drinking age, and those whose constitutions could stand the physical strain which this reaction from Puritan rule imposed often turned their carousing to profit. Roger North did not mince matters when he remarked of Jeffreys that, "having got acquaintance with the city attorneys and drinking desperately with them, he came into full business amongst them."² Questionable as these methods may appear when judged by present-day standards of morality, they occasioned little comment in the easy-going reign of Charles II, except from straitlaced observers such as the brothers North. In the case of George Jeffreys it was not long before these methods bore fruit. Early in 1671 the office of Common Serjeant, which was in the gift of the Corporation of London, fell vacant. Jeffreys decided to offer himself as a candidate, and he obtained the support of his namesake and others of the Court of Aldermen.³ On March 17, 1671, he was elected Common Serjeant of the City of London.

The Common Serjeant, besides being a member of the Corporation, was one of the two permanent judges who sat at the Old Bailey to try all kinds of crimes.⁴ His was the second judicial office in the City of London, and Jeffreys' election to it at the age of twenty-five can only be described as remarkable. While, on the one hand, it was the stepping-stone to further professional advancement on the bench, on the other it did not debar Jeffreys from continuing to practise in other courts. The Common Serjeant was in those days free to carry on his practice, and in this respect stood in much the same position

¹ Campbell, iii, 506.

² *Lives*, iii, 273.

³ Woolrych, p. 25.

⁴ The duties and position of the Common Serjeant are fully described in W. Bohun's *Privilegia Londoni* (1723), pp. 66, 313, and A. Pulling's *Order of the Coif* (1884), p. 43. They involved, *inter alia*, the trusteeship of the City orphans.

as the Recorder of any borough outside the Metropolis does to-day. Furthermore, it carried with it a comfortable dwelling-house in Aldermanbury, Cheapside. This stood opposite St Mary's Church, and had a spacious garden. By now Jeffreys had several children, and he therefore lost no time in moving into the new house and fitting it up luxuriously.¹

As he was now precluded from practising at the Old Bailey Jeffreys determined to try his hand at civil work, and he accordingly began to be seen at Westminster Hall. Here he was briefed in common-law, or, as they were then called, *nisi prius* actions. He became adept particularly in cases for assault and defamation, cases which would now be tried before a special jury. He avoided cases where difficult points of law might be involved, and concentrated on the straightforward type of case, where advocacy was often the determining factor. Indeed, the fame of his advocacy spread with such rapidity that he was "courted to take fees" and "breviates were thrust into his hands in the middle of a case by parties who perceived that things were going ill with them." Soon the City attorneys began to give him briefs to appear for them in commercial cases at the Guildhall, and, although he could not stand up in legal argument against the skilled commercial lawyers and special pleaders of the day, he soon showed himself to be their master before a jury.

Sir Matthew Hale, the Lord Chief Justice of the Court of King's Bench, frequently sat at the Guildhall. He was a man particularly susceptible to flattery, and, according to Roger North, "none ever gained so much upon him as Jeffreys." The Common Serjeant was careful, too, to pay attention to the Lord Chief Justice outside his court, and for this purpose often invited him to dinner. Hale loved nothing so much as a good gossip, and thus did Jeffreys

all by little accommodations administer to him in his own house after his own humour, as a small dinner, it may be a partridge or two upon a plate, and a pipe after, and in the meantime

¹ H. B. Wheatley, *London Past and Present* (1891), i, 20; P. C. Carter, *History of St Mary the Virgin, Aldermanbury* (1913), p. 95; J. J. Baddeley, *Cripplegate Ward* (1921), p. 47. The house was situated on the site immediately behind the houses now known as Nos. 18 and 19, on the east side of the street. It is the subject of an admirable article by Miss M. Melville Balfour in *Transactions of the London and Middlesex Archeological Society*, New Series, vol. vi, Part I.

diverting him with satirical tales and reflections upon those who bore a name and figure about town.¹

V

Besides attending to his growing legal practice and also his judicial work at the Old Bailey, which largely consisted in passing sentence on convicted prisoners, George Jeffreys put in regular appearances at the meetings of the Corporation, which he was entitled to attend by virtue of his office of Common Serjeant. His principal friends in the Corporation were Sir Thomas Player, the City Chamberlain, and Sir John Robinson, the Lieutenant of the Tower, whom on one occasion he successfully defended before the Privy Council in Whitehall on a charge of neglecting to pay the warders' wages.²

Nor did Jeffreys hesitate to speak his mind in the Council Chamber when he thought the occasion demanded it. Consequently he was not always popular with the other members. For instance, in January 1673 Sir Robert Viner, the King's goldsmith and principal banker, who was an influential Alderman, complained to the Clerk of the Privy Council of his conduct in opposing the motion that one George Seigneur, a Fellow of Trinity College, Cambridge, should be invited to preach before them. "Up starts our impertinent Common Serjeant as though fee'd against him," wrote the Alderman, "and says he knew him of a schoolfellow, and he was no such worthy person and I know not what more."³

As might be imagined, it was not long before his impetuous tongue got the Common Serjeant into trouble. For some time there had been growing friction between the Court of Aldermen and the Common Council, caused by the Lord Mayor and his court claiming the power to veto the proceedings of the Common Council. Matters came to a head in March 1675, when at a meeting of the Common Council Sir Robert Viner, who had become Mayor, and the Aldermen got up and walked out to mark their dissatisfaction with the proceedings. The Common Serjeant, as an officer of the Mayor's court, should properly speaking have followed, but he preferred to remain behind, and, supported by three others, including his friend

¹ North, *Lives*, iii, 97.

² *Calendar of Treasury Books*, 1676-79, p. 848.

³ *Calendar of State Papers (Domestic)*, 1672-73, p. 423.

the City Chamberlain, he put a question of which the Mayor and Aldermen had previously disapproved. For his motion, which apparently questioned the Mayor's right of summoning and dissolving meetings of the Common Council, Jeffreys was shortly afterwards called to account by the Court of Aldermen, and asked to withdraw it. This he refused to do on the ground that in acting as he did he only obeyed the wishes of the majority. This explanation was deemed unsatisfactory, and the Court of Aldermen accordingly proceeded to suspend him from his office, "sequestering in the meantime the profits thereof and depositing them in safe hands till a further proceeding be had."¹

Jeffreys now appealed to Lord Keeper Finch and others of his Majesty's Privy Council, and the upshot was that he was commanded to appear before the King in person and apologize for his misbehaviour. This he did in company with the Recorder, who subsequently testified to the effect that the Common Serjeant, on being asked upon whom it devolved to put the question on a debate, replied that "the question had always been used to be put by the Lord Mayor or by his lordship's appointment, and not otherwise, so far as he had observed," and he had never known the matter disputed; that

he was sorry for his deportment at the last Common Council, saying that what he did was a sudden act and rashly done without any intention to make any disturbance, and that he would freely acknowledge the same wheresoever his Majesty should command him.

The King thereupon directed the Recorder to recommend the Court of Aldermen that the Common Serjeant should be restored to his office. The court followed the King's suggestion after they had listened to Jeffreys' expressions of regret for his conduct and his assurances that he would always endeavour to "promote the honour and government of the City." Nevertheless, they could not altogether overlook his conduct, so that when the office of Judge of the Sheriff's Court fell vacant in the following year, and Jeffreys was proposed to fill it, he was defeated by forty votes, and the post went to a certain Mr Richardson, who was described, no doubt in intended contrast

¹ *C.S.P. (Dom.)*, 1675-76, pp. 27, 31. See also R. R. Sharpe, *London and the Kingdom* (1894-95), ii, 451 *et seq.*, quoting from the Guildhall archives.

to the Common Serjeant, as "an honest, quiet, and loyal man."¹ When, too, later in 1676 an election was held for the Recorder-ship of the City, an office which Jeffreys had long coveted, he was again passed over, the prize this time going to Sir William Dolben, a morose and peevish Protestant zealot.²

An incident of some constitutional significance which occurred about this time in the City, and in which Jeffreys was concerned, may be mentioned, since it led to his again appearing before King Charles, but not on this occasion in the rôle of a delinquent. The annual elections of Sheriffs for the City took place at a gathering in the Guildhall known as a Folk-mote or Common Hall, in which members of the various livery companies were entitled to participate. On these occasions it was the duty of the Common Serjeant to report the proceedings, which were usually quite formal, to the Court of Aldermen and to declare the names of those elected. At the Common Hall held on June 24, 1676, one Francis Jenkes, a linendraper, disregarding the business of the day, made an inflammatory speech addressed to the Common Serjeant, in which he set out the grievances of the citizens in respect of the decline of trade, piracy, and the need for calling Parliament, which at that date had been prorogued for more than a year. This oration was greeted with cries of "Well moved!" After some discussion Jeffreys was requested to submit the petition for a new Parliament to the Mayor and Aldermen at the same time as the names of the new Sheriffs. On his return to read out the names there were shouts for an answer to the message. Then, holding up his hand for silence, the Common Serjeant informed the assembly, apparently without much enthusiasm, that "he had acquainted his lordship and the aldermen with their request, and that his lordship had commanded him to declare unto them that he would be ready to join with them in that or any other thing for the good of the City."³

Now, it so happened that the Recorder had a grudge against Mr Jenkes, and after dinner that night he conveyed news of his behaviour to the Privy Council in Whitehall. As a result the unfortunate linendraper was arrested and haled before his

¹ *C.S.P. (Dom.)*, 1675-76, p. 537; Sharpe, *loc. cit.*

² Joseph Haydn, *Book of Dignities* (ed. 1890), p. 494.

³ Howell, *State Trials*, vi, 1190 *et seq.*; *C.S.P. (Dom.)*, 1675-76, p. 254.

Majesty in council, while the City officers were also sent for and interrogated.

"How came you to meddle with affairs of State?" one of the Lords of the Council asked the prisoner.

"I thought any of his Majesty's subjects in an humble manner might petition his Majesty for a remedy of any grievance whatsoever."

"Do you think anyone may petition for a Parliament?"

"I believe they may."

Here the King interposed, "I know whose scholar you are, and I will take care that none such as you shall have to do with the Government."

These words must have inflamed Jeffreys' ambition, and he determined that before long Charles would have recourse to such as himself. Jenkes was now removed to prison, where he remained for some months while his friends endeavoured to obtain his liberation on bail by means of a writ of habeas corpus from the courts. At this time the grant of the writ was not legally compulsory, being in the discretion of the judges. In point of fact, the efforts of Jenkes's counsel were eventually successful, and the publicity which the proceedings caused had a valuable effect, since it led three years later to the passing of the Habeas Corpus Act.

As for Jeffreys, his conduct in the City was from now onward dictated by a regard for official considerations. Henceforward, in the words of Roger North, "he became a high flier for the authority of the Mayor and Court of Aldermen."¹

VI

For some time past Jeffreys had been casting about for introductions to the principal figures at Court and in Parliament, by which means he hoped to advance his interests in other directions besides the City. A lucky chance had already brought him into touch with the notorious Will Chiffinch, the "trusty page of the backstairs" and Keeper of the King's Closet. "This Mr Chiffinch was a true secretary as well as page," Roger North tells us;

¹ *Lives*, i, 273.

for he had a lodging at the backstairs, which might have been properly termed the spy-office; where the King spoke with particular persons about intrigues of all kinds; and all little informers, projectors, etc. were carried to Chiffinch's lodging.¹

To this lodging Jeffreys was duly taken, and something in the nature of friendship sprang up between the two men, for both were prodigious drinkers. Chiffinch, we are told by the same authority, let none part from him sober if it were possible to get them drunk. If he succeeded in intoxicating Jeffreys with the famous "salutiferous drops" with which he was wont to charge his guests' glasses, intending to fish out their secrets and discover their characters, what Chiffinch found out was that the Common Serjeant could be profitably employed from time to time to send reports of the City's doings to Whitehall. That he accepted the offer and was employed upon this new venture within little more than a year after his becoming Common Serjeant we know from the existence of a curious note written by Jeffreys to Sir Richard Browne, the venerable Clerk of the Council, in which he adjured him to "fear not" and "keep all things close," subscribing himself "your most faithful servant."²

In 1672, the year in which Jeffreys was in correspondence with Sir Richard Browne, a report on the disposition of the Aldermen and Common Council was drawn up for the King's guidance. The authorship of this interesting but little-known report, which was published a century later in the *Gentleman's Magazine*,³ is anonymous, but there are strong reasons for believing that Jeffreys had a hand in it. The Common Serjeant almost certainly supplied the material on which it was based, if he did not actually write it. This conclusion is supported by its characteristic language, the fact that Jeffreys' friends on the Corporation are particularly well noticed, and the established date of its composition, at which time it is known that Jeffreys was supplying the Court with information about the City.

Sir George Waterman, the Lord Mayor for the year 1672-73, and a man whom the writer evidently did not admire, is described as "a person almost void of understanding, but not of will. He is very weak in the one, but most perverse in the

¹ *Lives*, i, p. 274.

² Jeffreys to Browne, April 5, 1672 (British Museum, Add. MSS. 15858, f. 4).

³ *xxxix*, 516 (November 1769).

other. He employs abundance of time, but does no business." Likewise Sir John Frederick: "by reason of his age, he is apt to be led by others, especially by Sir John Lawrence"; he was a man of little dispatch, very ready to run into mistakes; he "hates a soldier and cannot endure to see any of the King's Guards." As for Sir John Lawrence,

he hath used all the skill and cunning he was capable of to engross the whole business of the City into his own hands and some few of his creatures: to this purpose he hath always had three or four creatures to cry him up in all parts of the City and to assist him in all popular elections.

Among these "creatures" could apparently be counted Sir Thomas Davies, "a mean-spirited person; when he was Sheriff of London he would (in a blind tavern) be drunk with his bailiffs and serjeants." This Alderman was "one that will venture as little as may be either for the safety of the King or service of the City." In the same category probably fell Alderman Patience Ward, of whom we shall hear more: he "hath had a wife many years, but whether they were ever married is a question, unless it were according to the directory of the Quakers. . . . What interest he hath is among the Nonconformists, and that is not much."

On the other hand, Sir John Robinson, a close friend of Jeffreys and like him a native of Denbighshire,

hath been most industrious in the civil government of the City, watchful to prevent any thing that might reflect any prejudice or dishonour upon the King's government, happy in dispatch of business to the great contentment of the people.

Sir Robert Clayton, another friend of the Common Serjeant, and Sir Jonathan Dawes filled the office of Sheriffs

to the great honour of the City's government. They are persons of great interest in their several businesses, and thereby they do industriously endeavour to serve his Majesty and the City. They want no courage nor conduct in any business they undertake; they have a great share of love and esteem from people of all sorts.

Then there was Alderman John Moore, a future Tory Mayor: "there is very good ground to believe he will prove a good magistrate, and by the interest he hath among sober discreet people he may do very good service."

A number of those Aldermen who were ill-disposed to the Court party did not reside in the City. On this score the writer has a useful suggestion to put forward :

Having not lived in London nor built houses for themselves since the Fire, they have neither encouraged the building of the City nor have they any great interest among the inhabitants, being strangers to them. It is therefore humbly offered that his Majesty will command those persons either to come forthwith and inhabit amongst the citizens and there constantly execute their office, or else lay down their gowns and make room for some other persons that may supply their office.

A magistrate and minister non-residents are both alike beloved by the people, and neither like to do much good. A strict injunction from his Majesty to the purpose aforesaid, namely, that they come and take houses in London, not sneaking in lodgings, may deliver the King and Government of three or four evil persons.

The report concludes with a reference to the Common Council which shows that the author, whom we may fairly assume to be Jeffreys, was growing familiar with the ways of the demagogue. "The Commons that represent the City in Common Council," he observes,

are between two and three hundred persons, chosen in their several wards; the greatest part of them are truly loyal to his Majesty and heartily affectionate to the Church of England. It is impossible that anything can pass that Court prejudicial to the King, if their voices be left free to them and if they be not circumvented by the flattering speeches of three or four persons. *Privilege* is a fine word, but as it may be made use of it may prove a snare to very honest men who have not that greatness of judgment as to discern all the artifices and disguises that are employed by ill-minded persons such as Sir John Lawrence was and as his Majesty will find him if ever he have power.

How remarkably accurate was the prophecy contained in these words Jeffreys was shortly to learn to his cost.

VII

By rendering similar services Jeffreys got acquainted with two other individuals who had great interest with King Charles II. These were one of the King's mistresses, the Duchess of Portsmouth, and his Majesty's chief Minister in Parliament, the Earl of Danby.

Louise Renée de Kéroualle, the woman whom the King delighted to honour, belonged to an old Breton family.¹ She began life as a maid of honour to the Duchess of Orleans, sister of Charles II, and she had accompanied the Duchess to England during the negotiation of the secret Treaty of Dover, which was concluded between Charles II and the French monarch, Louis XIV, in 1670. This treaty aimed at the partition of Holland and the establishment of the Catholic religion in England. On the sudden death of the Duchess of Orleans at this time Louise returned to England, where she had already impressed Charles II, who was beginning to tire of the titular mistress, Lady Castlemaine. She quickly supplanted that lady in the royal favour on being appointed maid of honour to the Queen. Soon after bearing the King a son, the future Duke of Richmond, she was naturalized as an English subject and created Duchess of Portsmouth. From the outset of her sway at Court she was unpopular in England as a Frenchwoman and a Catholic, who, moreover, was known to aim at keeping Charles II dependent on France. Nevertheless, she succeeded in establishing herself in a position of such security that, according to a lampoon of the period, she was able to push the interests of a favourite like Jeffreys, as well as to combat the rising influence of the anti-Catholic Duke of Monmouth, the King's bastard son by Mistress Lucy Walter :

Monmouth's tamer, Jeff's advance,
Foe to England, spy of France,
False and foolish, proud and bold,
Ugly, as you see, and old.

When Louise de Kéroualle first came to England in 1670 the government of the country had been, since the fall of Clarendon three years previously, in the hands of the notorious Cabal of Ministers, of whom the moving spirit, Lord Treasurer Clifford, was an ardent Catholic. In 1673 Parliament passed the Test Act at the instigation of two of the more unscrupulous members of the Cabal, Arlington and Shaftesbury, who wished to drive Clifford from office. This Act, which prevented anyone from holding civil or military office under the Crown who refused to take the sacrament by the rites of the Church of

¹ See H. Fourneron, *Louise de Kéroualle, Duchesse de Portsmouth* (Paris, 1886; English trans., 1888).



CHARLES II
J. M. Wright
National Portrait Gallery



LOUISE RENÉE DE KÉROUALLE, DUCHESS OF PORTSMOUTH
Pierre Mignard
National Portrait Gallery

England, resulted in the dissolution of the Cabal and the exposure of many leading Catholics, including the King's brother, James, Duke of York, who was obliged to resign his office of Lord High Admiral. Clifford's place as Lord Treasurer and Chief Minister of the Crown was filled by a Yorkshire Cavalier, Sir Thomas Osborne, whom Charles shortly created Earl of Danby.

The King, who was beginning to learn wisdom with advancing years, had realized that Parliament and the country would not agree to the forcible introduction of the Catholic religion into England any more than it would to the Continental supremacy of France at the expense of Holland. But, though he very wisely abandoned these projects, he did not abandon his ideas of absolute sovereignty. He therefore encouraged Danby to choose his followers in Parliament from those who were attracted to the old Cavalier principles of Church and State, a belief in the combined virtues of rigid Anglicanism and the royal prerogative. This Danby succeeded in accomplishing by the lavish distribution of bribes from public revenue. In these operations can be seen the beginnings of the Tory Party, whose members reaped the rewards of voting at the Lord Treasurer's direction. The Opposition were led by Shaftesbury, who had been dismissed from the Lord Chancellorship on the dissolution of the Cabal, and who was now busily engaged in building up the Whig Party on the principles of religious toleration and Parliamentary supremacy. Though they made some stir out of the grievances of the Dissenters, the Whigs were hampered by lack of funds, and Danby was able to carry through his principal measures. In the domain of foreign policy there were the termination of the war with Holland and the strengthening of the bonds between the two countries by negotiating the marriage of the Protestant Dutch Prince William of Orange with the Catholic Duke of York's daughter Mary. On the other hand, Danby was obliged against his better judgment to connive at the King's secret receipt of money from Louis XIV as the price of England's neutrality in the wars on which the French monarch had embarked in Europe. *

Jeffreys' contact with official circles determined him to attach himself to the followers of Danby, and he lost no time

in making himself useful to the Lord Treasurer. From time to time the Common Serjeant furnished the Minister with information as to the temper of the City and let him know when he got wind of any projected attack upon him in the Lower House. In one letter which has survived Jeffreys returns his "dutiful acknowledgment of the many favours" his patron was pleased to confer upon him. In the same letter, which was written at the opening of the new session of Parliament in 1677, he informed Danby,

what I doubt not but you have already been advertised of, that to-morrow there are some few (for I cannot understand, though I have been inquisitive, that there are many concerned in it) that design to try some reflections on your management of the Excise, and have been inquisitive in that affair in order thereunto; it is not hoped the success will be great, but desire to know how it will relish in the House.¹

All would appear to have gone well on this occasion. Indeed, it was a most successful session for Danby, since Shaftesbury and other Whig peers who had attacked him were sent to cool their heels in the Tower, and the House of Commons continued to vote the King his annual subsidy, though Sir John Reresby, one of Danby's supporters in the Lower House, was bound to admit that "some votes were gained more by purchase than affection."²

From the Lord Treasurer Jeffreys received a thorough political schooling in the principles of Toryism, and thus he grew to hate Dissent and to favour a strong union of King and Church at the expense of Parliament. It was, therefore, by no means a distasteful task for the Common Serjeant when he was called up at the Old Bailey early in 1677 to pronounce the sentence of the court upon the Dissenting fanatic Lodowicke Muggleton, who had been convicted of publishing a blasphemous book. For over twenty years Muggleton, who was the son of a farrier, had posed as a prophet divinely inspired to declare a new system of faith, and his fiery preaching and cursing, accentuated by his aquiline nose, high cheek-bones, and long auburn hair, had attracted a number of followers who called themselves Muggletonians. To one of them we are

¹ H. B. Irving, *The Life of Judge Jeffreys* (1898), p. 27.

² Reresby, *Memoirs*, ed. Browning (1936), p. 115.

indebted for an account of the sentence pronounced by Jeffreys, who "with a disdainful countenance looked upon the prisoner, and with words so abusively scurrilous, that it is a shame for a Government to have such magistrates."¹ Jeffreys sat in the judgment seat, Muggleton said afterwards, as Pilate did against Christ, "and when he saw my face he called me impudent rogue because my countenance did not change nor look sad nor ask any favour of the court."²

"You rogue that stands there! You impudent rascal, sirrah, that hath such confidence to stand in the presence of the court to justify so much blasphemy! Sirrah, the court has been too favourable to such a villain as thou art, who has been guilty of the blackest deed that ever was invented by any rogue except thyself—deeds arising from the very blackest of darkness itself. And considering all thy villainy the court has been too favourable to the proposing a sentence.

"You are to stand three days upon the pillory in three principal places in the City of London; and your blasphemous books are to be divided into three parts, and there with fire to be consumed before your face; and you are to pay a little fine, but five hundred pounds. It is but a little one considering your villainy; and you must give security for your good behaviour during your life, and such as are not of your own gang."

The Common Serjeant on this occasion is also credited with expressing regret on behalf of the court that the laws were so unprovided with a fitting penalty for Muggleton's crimes, and that therefore he was to have "an easy, easy, easy punishment." The punishment turned out to be not so easy after all, since the wretched prophet when in the pillory "was pelted with clay, rotten eggs and dirt in abundance," not to mention glass bottles and stones and even a burning faggot. Added to this, Muggleton was thrown into Newgate in default of the fine, while Jeffreys tried to prevent the carrying into effect of a writ of habeas corpus which his friends secured on his behalf from the Lord Chief Justice. Little wonder was it that the injured prophet described his tormentor as "a bawling devil."

Muggleton went farther than this. Jeffreys was "a man whose voice was very loud," and "one of the worst devils in

¹ N. Powell, *A True Account of the Trial and Sufferings of Lodowick Muggleton* (1808).

² L. Muggleton, *The Acts of the Witnesses of the Spirit* (1669), p. 267 *et seq.*

nature," while the trial had proved him an absolute devil in the flesh ;

and he is recorded in the tables of heaven for a reprobate devil, and he shall be recorded here on earth to the end of the world a damned devil. For that body of his, which now is his heaven which clothed itself in scarlet and sat in the judgment seat against me, shall be in hell. And that lofty, bawling spirit of his shall be his devil, the one shall be as fire, and the other as brimstone burning together to all eternity. And he shall remember in the Resurrection, when he is raised again, that he gave judgment upon me, . . . and I am sure the God of heaven will not deliver him from these eternal torments.¹

¹ Muggleton, *loc. cit.*

CHAPTER III

THE RECORDER AND THE POPISH PLOT

THE curses of Lodowicke Muggleton had no effect upon Jeffreys, for fortune favoured the Common Serjeant throughout the year in which that crazy prophet was sentenced, and, indeed, continued to do so for many months afterwards. The combined efforts of Lord Treasurer Danby and the Duchess of Portsmouth at length induced the King to bestow an important mark of favour upon the successful young lawyer. On September 14, 1677, George Jeffreys was summoned to Whitehall, and there received the honour of knighthood at the hands of King Charles. Or, as a popular lampoon of the day put it:

George from the Courts has knighthood got
Bestowed upon him for his bawling,
A royal mark for caterwauling.

At the same time he was appointed one of the King's Counsel, thus being permitted to exchange his stuff gown for a silk one. Shortly after this the Inner Temple signified their appreciation of his Majesty's gracious action in so honouring one of their number by making Sir George Jeffreys a Bencher of the Inn.¹

Jeffreys enjoyed a second stroke of luck about this time. In October 1677 a fire broke out in the Inner Temple. Its origin is unknown, but it was of a serious character, for, notwithstanding the improvements in fire-fighting appliances which the Society had introduced since the great conflagration a decade previously, this fire resulted in the destruction of the major part of King's Bench Walk. On this occasion the Inn obtained considerable assistance in putting out the fire from the Thames watermen and fire-engines, supported by the neighbouring parishes of St Bride's and St Dunstan's, with the result that the fire was prevented from spreading beyond King's Bench Walk. One of the few sets of chambers in these buildings which escaped destruction were those of the Common

¹ Woolrych, pp. 33, 38; *Calendar of Inner Temple Records*, iii, 120; P. Le Neve, *Pedigrees of the Knights* (Harleian Society (1869), vol. viii), p. 321.

Serjeant, close by which the fire is stated to have stopped, "without doing them any damage." Jeffreys was also said to have enjoyed a similar piece of luck during the Great Fire when he was a student.¹

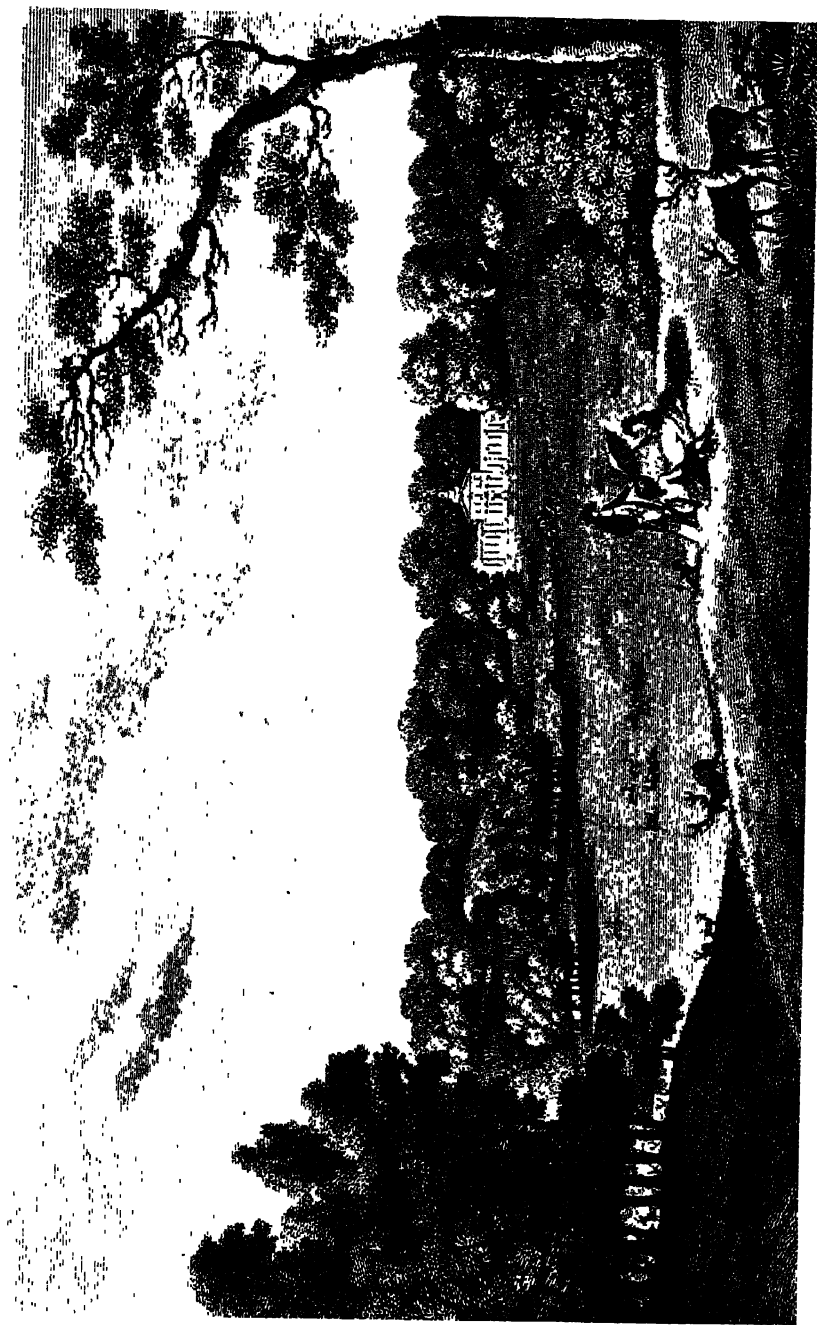
The horizon of Jeffreys' life was not, however, completely unclouded, for soon after becoming a Bencher of the Inner Temple he suffered a severe domestic loss. On February 14, 1678, his wife Sarah died at their house in Aldermanbury.² She had borne him a considerable family, five sons and two daughters, and they had made an extremely happy and contented household.³ In the early days of struggle through which every barrister goes a wife can be the greatest help and comfort. Sarah Jeffreys, though little is known about her beyond the romantic story of her marriage, which has already been told, was all this and more to her husband. After her death Jeffreys was never again to find such happiness in his private life as he had enjoyed with her.

It was some slight recompense for his loss that Jeffreys was now in a position to gratify a desire which professional success in the shape of a comfortable income put within his reach. He had long wanted to have a place in the country, and he had recently bought one in Buckinghamshire which was in the market. This was Temple Bulstrode, a well-wooded estate of about eight hundred acres, near Gerrard's Cross.³ His new acquisition afforded him some distraction from his grief. He was in residence, if not before his wife's death, certainly in the earlier part of 1678, for in August of that year King Charles and some of his Court, including, it seems, the Duchess of

¹ Historical Manuscripts Commission, Report VII, *Verney Papers*, p. 470; *Calendar of Inner Temple Records*, iii, xxv *et seq.*

² She was buried on February 18, 1678, in the parish church of St Mary, Aldermanbury. The cost of her interment was £3 6s. 6d. (P. C. Carter, *History of St Mary the Virgin* (1913), p. 95; *Registers of St Mary the Virgin, Aldermanbury*, ii, 191). The burial of one of her servants about the same time suggests that they both were victims of an epidemic.

³ The manor of Temple Bulstrode was purchased by Jeffreys from Sir John Bennet in 1676 (*Home Counties Magazine*, x, 92). About the same time Jeffreys acquired the neighbouring manor of Fulmer, but in view of improvements which he planned and subsequently carried out he may not have taken up immediate residence. The history of Bulstrode is related in an interesting series of articles by W. H. Wadham Powell in the *Home Counties Magazine* (vols. ix, x); see also George Lipscomb, *History of Buckingham* (1847) (ii, 503-507), and *Victoria County History of Buckinghamshire* (iii, 276 *et seq.*). The manors of Temple Bulstrode and Fulmer eventually passed to Jeffreys' son-in-law, Charles Dive, who sold them in 1706 to William Bentinck, first Earl of Portland.



BULSTRODE PARK, BUCKINGHAMSHIRE
Engraved by Walker from a drawing by Corbould



Sale de WESTMINSTER,
ou WESTMINSTER-HALL.

WESTMINSTER HALL

From an engraving in James Beeverell's *Les Délices de la Grand' Bretagne*.

Portsmouth, drove over from Windsor and dined there. The visit occasioned some gossip in the neighbourhood, since it was reported that not only did the King cause his host "to sit down at table with him," but his Majesty actually "drank to him seven times."¹ No doubt Jeffreys was well able to return the compliment.

Such a mark of royal attention as this naturally did not escape comment beyond the confines of Buckinghamshire, and it was freely stated that a high honour was in store for Jeffreys. Some said he was to be Lord Chancellor of Ireland, others that there was to be a reshuffle on the judicial bench and that Jeffreys would get the coveted Recordership of the City. So it fell out. A few weeks after Charles's visit to Temple Bulstrode one of the King's Bench judges was retired, and the Recorder, Sir William Dolben, elevated in his place. However, when Jeffreys came to put himself forward for the vacant Recordership he discovered there were two other candidates for the office, of whom one was the Mr Richardson who had been preferred to him as Judge of the Sheriff's Court two years previously. But the King undertook to put the matter right, and accordingly on the eve of the election Charles wrote a personal letter to the Lord Mayor and Aldermen of the City "most particularly recommending Sir George Jeffreys" for the post. The City authorities were not disposed to disregard such a strongly worded royal mandate, and the result was that on October 22, 1678, Sir George Jeffreys was "freely and unanimously elected by scrutiny" Recorder of London.²

II

Sir George Jeffreys made his first appearance on the Bench in the red robes of the Recorder at the Old Bailey Sessions which opened on December 11, 1678. There was a fairly large calendar, in all nearly thirty prisoners. Sir William Scroggs, who had recently been appointed Lord Chief Justice, presided at the trials, and it fell to Jeffreys as Recorder to pronounce the sentence of the court in each case. A report of

¹ Hist. MSS. Comm., Report VII, *Verney Papers*, p. 471; *Verney Memoirs*, iv, 334.

² *C.S.P. (Dom.)*, 1678, Addenda, p. 473; Woolrych, p. 34.

these proceedings has survived, being among the earliest to be taken down in shorthand, and they are of particular interest as showing something of Jeffreys' early judicial manner.¹

In those days prisoners who had pleaded guilty or had been convicted were not sentenced separately, as they are now. They were put back as soon as their cases had been heard, and when all had been disposed of they were brought up in batches to receive sentence. Those guilty of capital offences were previously bound together by the executioner. At these sessions six persons were condemned to death, their offences varying from murder to ravishing a child of eight. In the latter case, we are told, the jury originally brought in a verdict of not guilty, since some of them were of the opinion that a child of these years could not be ravished, but the learned Recorder, not conceiving the verdict to be according to the evidence, refused to accept it from them, we learn, without further deliberation, "and laboured to satisfy them of the manifestness of the proof." His argument was successful, and in this case a verdict of guilty was eventually found.

When this batch of prisoners had been brought before him the Recorder addressed them in words which are perhaps sufficiently remarkable as to justify their quotation in full :

"You that are the prisoners at the Bar have been severally indicted of several offences, and upon your trials you have had the benefit of the best of laws, because you have had the liberty of making your defence to the several accusations whereof you have been accused. You have been fully heard, and by persons of known integrity who have been triers of fact and countrymen of your own sworn to do right. You have been convicted of the several offences wherewith you stand charged, and nothing remains save only for the court to do that duty which the law requires of them, to give judgment upon those verdicts by which you stand convicted.

"This is a duty incumbent on the court, though a sad one; and I must confess I cannot but be much troubled to see youth arrived to that height of debauchery, notwithstanding the frequent examples that are found in this place. So that I must say, and I tremble to think I am obliged to say, that the frequent examples of this place seem rather to be examples to some to outdo the

¹ *An Exact Account of the Trials of the Several Persons Arraigned at the Sessions House in the Old Bailey for London and Middlesex, December 11-12, 1678* (London, printed by G. Hills, 1678).

villainies that are punished here than to deter them from the commission of them.

"When I see some among you there that now seem mighty full of grief, and sense of the deplorable condition you have brought yourselves into; who have had mercy shown them here, and yet continue to offend so gracious a King; when nothing will work upon you but you will persist in so vile a habit of wickedness; it seems to me that absolutely necessary judgment be speedily executed upon you, there being so small hopes of reformation. I speak this to let the world know that mercy is not to be shown to such, as after forgiveness sin is worse.

"And, inasmuch as you have received fair and full trials upon which you have been convicted, you have by your own vile carriages forfeited that life which you might else have happily enjoyed, and shortened that which by your own industry you might have preserved and lengthened to the comfort of yourselves and friends and the good of your generation. And now it remains only for you to take care of that little time that is left you, to improve it to the utmost, for the advantage of your immortal souls. For, having by your great wickedness and public affronts to the justice of the nation forfeited your lives, it will be needful for you to employ the minute of breathing time to prepare for eternity. For, though the law do inflict the punishment of death on you here, you have God in heaven and a blessed Saviour and Redeemer, to Whom upon confession and repentance you may with hopes apply yourselves for mercy in the world to come.

"And it will be the duty of every good Christian not only to take care that, being warned by your examples, they avoid the mischiefs you have run into, but also to join their prayers and all the assistance they can contribute to the saving of your souls, who by your crimes have thus destroyed your bodies.

"Some of your offences are of a more vile, more black, and more dangerous nature than others. One of you stands convicted of that most horrid crime, murder, blood which cries out to Almighty God for vengeance—murder, I cannot but say without any provocation, which is not only an offence against the law of God, but even against nature, for one man to destroy another without a provocation. If there were no such thing as a God in heaven or justice upon earth, Nature itself teacheth a man not to be barbarous to his own likeness. Therefore it will become thee to use all the tears thou canst shed to wash away the blood thou hast spilt, and that will not be enough to take off thy guilt, for nothing but the precious blood of our dear and blessed Lord and Saviour, the Lord Jesus Christ, can save a man that is guilty of so great and horrible a wickedness as shedding innocent blood.

"And for the rest, their offences have been such as by the law are to be punished with death. It will become you to betake yourselves to repentance; and I expect it from him whose proper

business it is that he give you all the assistance he can to promote so good a work by helping you to spend your little time well in order to a happy Eternity. This I have spoken in charity to your souls. I do therefore in the name of the court pronounce this judgment upon you all, save only the youth that is convicted for clipping the King's coin—that you shall go from hence to the place from whence you came, and from thence to the place of execution, where you shall severally be hanged by your necks till you be dead; and Jehovah the Lord of Heaven and Earth have mercy on your souls.”

The Recorder then proceeded to sentence the young man who had been convicted of coining to the form of capital punishment which was then the penalty for treason. It grieved him to see a youth in his position “in whom there seems so much modesty,” but he had to do his duty. “The truth of it is,” the Recorder added, “the apprentices of London have got such a trade of abusing their masters by clipping, and such tricks, which they are encouraged to by a pack of goldsmiths’ men who are fit for their purpose, that if some of them be not made examples it will be the ruin of many. It is a disease that will run through the whole flock.”

The next batch of prisoners to be brought up, ten in all, were those who had been convicted of petty larceny. They were old hands, mostly women, one of whom, Mary Hipkins, the Recorder singled out for particular attention:

“You, the prisoners at the Bar, I have observed in the time I have attended here that you pickpockets, shoplifters, and you other artists, which I am not so well acquainted with which fill up this place, throng it most with women; and generally such as she there, Mary Hipkins, with whom no admonitions will prevail. They are such whose happiness is placed in being thought able to teach others to be cunning in their wickedness, and their pride is to be thought more sly than the rest—a parcel of sluts who make it their continual study to know how far they may steal and yet save their necks from the halter, and are as perfect in that as if they had never been doing anything else. But take notice of it, you that will take no warning, I pass my word for it, if ever I catch you here again, I will take care you shall not easily escape.

“And the rest of those women that have the impudence to smoke tobacco and gussle in alehouses, pretend to buy hoods and scarves only to have an opportunity to steal them, turning thieves to maintain your luxury and pride—so far shall you be from any hope of mercy, if we meet you here for the future, that you

shall be sure to have the very rigour of the law inflicted upon you.

"And I charge him that puts the sentence into execution to do it effectually, and particularly to take care of Mrs Hipkins. Scourge her soundly, and the other woman that used to steal gold rings in a country dress: and, since they have a mind to it this cold weather, let them be well heated.

"Your sentence is this—that you be carried from hence to the place from whence you came, and from thence be dragged tied to a cart's tail through the streets, your bodies being stripped from the girdle upwards, and be whipped till your bodies bleed."

This sentence also has been given in full principally because the historian Lord Macaulay, in a well-known passage in his *History of England*, puts words into the Recorder's mouth which are wholly the product of his own imagination, and dwells upon the treatment of Mistress Hipkins as indicating "the most odious vice which is incident to human nature, a delight in misery merely as misery."¹ Beyond exhibiting a characteristic sense of grim humour, Jeffreys, who was but the official spokesman of the court on this occasion, did not impose a sentence on Mrs Hipkins and her hardened companions in crime which can be regarded as particularly severe for these times, however repugnant it may sound to modern ears. However hardened, too, Jeffreys may have become in later years to human suffering, in fairness to his character it is well to bear in mind that there is no evidence whatever at this stage of his career to support the view of lustful sadism which Macaulay invites his readers to take.

Last to be summoned at these sessions were two brothers, Thomas and John Johnson, who had been found guilty of stealing lead from the top of Stepney Church. With them the learned Recorder was also pleased to be jocular, but his humour, though a trifle rough, can hardly be described as brutal. "You are brethren in iniquity, Simeon and Levi," he said before fining them twenty pounds apiece. "I find you are not churchmen the right way. But you are mightily beholden to the constable; if he had given you but half an hour longer, you had been in a fair way to be hanged. Your

¹ i, 446. Macaulay's version is almost too well known to require repetition: "'Hangman, I charge you to pay particular attention to this lady! Scourge her soundly, man! Scourge her till the blood runs down! It is Christmas, a cold time for madam to strip! See that you warm her shoulders thoroughly.'"

zeal for religion is so great as to carry you to the top of the church. If this be your way of going to church, it is fit you should be taken notice of. It is but a trespass, it is true, but I assure you one of the rankest I ever heard of; it is cousin-german to felony. Are you not ashamed to have offered at the commission of such an offence in a place whereto, if you were men that had any regard to a future state, you would pay a great reverence, because good men meet there to pray against such offences, not to commit them as you did?"

III

It is likely that when the King visited Jeffreys at Bulstrode in the summer of 1678 Charles divulged a startling piece of information which had recently reached him. While walking with his spaniels in St James's Park about a fortnight previously his Majesty had been accosted by a Lancashire gentleman, named Christopher Kirkby, whom he knew slightly by reason of their mutual interest in chemistry. Kirkby apprised the King of a pretended secret design on his life, and produced a paper alleging details of a comprehensive Catholic plot to overthrow the Crown. This paper had been prepared by the notorious Titus Oates, a perjured adventurer who had lived in various Jesuit colleges on the Continent, from all of which he had been expelled, and who hoped for material rewards by proving that Catholicism in England was synonymous with treason.

Oates now came forward, and early in September went to see a well-known magistrate, Sir Edmund Berry Godfrey, before whom he swore to the truth of his allegations. He knew just enough about the Jesuits in London to fit the chief actors in the "hellish plot" with names and to give the substance of his narrative a semblance of credibility, but much of it teemed with absurdities, and many details were obviously invented. The gist of the conspiracy was that the Catholics would fire the City, massacre every Protestant who refused to recant, forcibly convert the country to the Roman faith with the aid of French and Irish arms, and murder the King and place the Duke of York on the throne. Among those particularly incriminated was the Duke's confidant and his wife's secretary, Edward Coleman.

According to Oates, these arrangements were planned at a meeting of the Jesuit congregation in the White Horse Tavern, in the Strand, earlier in the year, at which the informer claimed to have been present. In actual fact, a meeting of the Jesuits had taken place at this time, but it had discussed none of these projects. Furthermore, it had been held in the private apartments of the Duke of York in St James's Palace, and Dr Oates, as he called himself, had not been there. In fact, Oates did not even know where the "consult," as it was called, was held. "If Oates had but known," remarked the Duke some years later, in surprisingly modern idiom, "he would have cut out a fine spot of work for me."¹

The object of Oates's visit to the magistrate was that Sir Edmund Berry Godfrey should be in a position to publish the sworn story if the Court and Privy Council were to seek to suppress it. What happened was quite different. Sir Edmund did not believe the extraordinary tale, and he said so in private. Furthermore, though politically a stout Protestant, he had friends among the Catholics for whom he had considerable respect, and he therefore thought it his duty to warn Coleman of what was afoot, advising him to destroy any papers capable of being used against him. Meanwhile the brazen Oates had gone before the King and Privy Council and repeated his allegations. The King plainly thought the story impossible, and he actually caught Oates prevaricating in his answers. But it was an age when much store was set by the testimony of low-class informers, and Lord Treasurer Danby, egged on by the Whig lords, was not permitted to abandon the inquiry. Warrants were accordingly issued for the arrest of a number of less distinguished Catholics, including Coleman. Unfortunately for the Duke's confidant, he had failed to take his friend Godfrey's hint, and through carelessness or some other cause he had left a packet of incriminating letters from the Papal Nuncio and the French King's confessor, Père La Chaise, behind a chimney in his rooms. The discovery of this correspondence made it imperative for Coleman to be brought to trial on a charge of high treason. It also had the effect of saving Oates from immediate exposure by giving substance to the belief that the rest of the alleged plot was genuine.

¹ Reresby, *Memoirs*, p. 260.

A fortnight after Coleman's arrest the plot received a further fillip. On the morning of October 12 Sir Edmund Berry Godfrey walked out of his house in Hartshorn Lane and was never seen alive again. The same evening his disappearance gave rise to talk that he had been murdered by Papists. Five days later his body was discovered in a ditch at the foot of Primrose Hill, beyond Marylebone, with his sword run through his heart and marks of strangulation on his neck and breast. Roger North tells that he was a particularly easy mark for vengeance:

His daily custom was to go about alone, creeping at all hours in lanes and alleys as his fancy and occasions led him, and besides that he was a man so remarkable in person and garb that, described at Wapping, he could not be mistaken at Westminster. He was black, hard-favoured; tall, stooping, wore a broad hat and sometimes a gold hatband, and went commonly wiping his mouth and looking on the ground; and, if there were a design to make any man the unhappy subject of such a villainy, none so readily marked out nor so easily to be taken as he was.¹

The crime, which was immediately fastened on the Catholics, produced a tremendous howl for vengeance throughout the country, and firmly established the general Protestant belief in the Popish Plot. Sir Edmund Berry Godfrey's death has always been a mystery, and it will probably remain so for all time.² It is tolerably certain, however, that the Catholics, who were now turned into scapegoats on its account, had nothing to do with it. Unfortunately for them, the country's blood was up, and arrests followed wholesale.

Anyone connected with the Catholic Duke of York was suspect, and it was natural that Samuel Pepys, the Secretary to

¹ R. North, *Examen* (1740), p. 199.

² Mr J. G. Muddiman in an interesting article, "The Mystery of Sir E. B. Godfrey," in *The National Review* (September 1934), followed by Mr Arthur Bryant in his *Samuel Pepys: The Years of Peril* (1935), put forward the view that Godfrey was murdered by the dissolute young Philip, Earl of Pembroke. Pembroke was a follower of Shaftesbury and a homicidal dipsomaniac who hated Godfrey, and his hatred may have been inflamed by the Whig leader. In the spring of 1678 a London Grand Jury, of which Godfrey was foreman, had brought in a true bill against Pembroke for a particularly brutal murder. He was subsequently tried by his peers and convicted of manslaughter, but secured his discharge by pleading benefit of clergy. It is significant that Godfrey thought it wise to take a prolonged holiday out of England about this time. This view, which would appear to have much to recommend it, is supported in the latest book on the subject, Mr J. D. Carr's *The Murder of Sir Edmund Godfrey* (1936), where the various authorities are collected.

the Navy Board, who had held that office when the Duke was Lord High Admiral, should have been particularly anxious to clear himself of any suggested complicity both in the crime and the plots. On October 28, therefore, we find him coming to Jeffreys, barely a week after Jeffreys had been sworn in as Recorder, and inviting him to witness the deposition of a certain Robert Payne, a hatter, who accompanied him. A ruffian cut-throat, calling himself Colonel John Scott, and known to Pepys as a secret agent of the Whig lords, Shaftesbury and Buckingham, left Payne's house, where he had been lodging two days before Godfrey's body had been discovered, and his subsequent endeavour to conceal his movements suggested that he knew something of the mysterious business.¹ Unfortunately, before the order for his arrest could be executed Scott had succeeded in escaping to France. Some months later, when Shaftesbury and the Whigs came into power, this scoundrel was to return under the protection of his patrons and give evidence at Pepys's own trial.

Meanwhile Parliament ordered all Papists to be secured, and preparations were hurried on for a spectacular series of State trials, in which it was hoped to convict the many Catholics who were already in custody. In the majority of these Jeffreys took part either as a judge at the Old Bailey or as prosecuting counsel in Westminster Hall, where some of the accused were tried at the bar of the Court of King's Bench. First to be tried was the Duchess of York's secretary, Edward Coleman, who appeared before the Lord Chief Justice, Sir William Scroggs, and other judges at Westminster on November 27. His sad, sunken eyes and lean, pale features, accentuated by a black peruke, suggested long fasts and great spiritual zeal. The prosecution was represented by the two Law Officers of the Crown and a number of other counsel, including Jeffreys, whose duty it was to open the indictment. This duty Jeffreys performed with his customary air of self-assurance.²

"May it please you, my lord, and you, gentlemen of the jury," Jeffreys began, "Mr Edward Coleman, now the prisoner at the bar, stands indicted for high treason, and the indictment sets forth that the said Edward Coleman, endeavouring to

¹ Rawlinson MSS. A. 188, ff. 108-112.

² Howell, *State Trials*, vi, 2 *et seq.*

subvert the Protestant religion and to change and alter the same, and likewise to stir up rebellion and sedition among the King's liege people and also to kill the King, did on the 29th of September in the twenty-seventh year of the reign of our Sovereign Lord the King, at the parish of St Margaret's, Westminster, in this county, compose and write two several letters to one Monsieur La Chaise, that was then servant and confessor to the French King, and this was to procure the French King's aid and assistance to him and other traitors, to alter the religion practised and by law established here in England to the Romish superstition."

There were several similar counts in the indictment, and when these had been duly set forth and the case opened the principal Crown witness was called. This was Titus Oates, and at the outset of his evidence Jeffreys asked the court that he should not be interrupted, but be allowed to give his evidence in his own way. This necessary request was granted, for both judges and counsel, even the accused, were constantly in the habit of interrupting witnesses, and this was a practice against which Jeffreys set his face. Then began the perjured testimony which sent Coleman to the gallows, and whose repetition at subsequent trials consigned a host of others to a similar fate. Although the prisoner repeatedly protested that he had never set eyes on Oates until that very day in court, Oates swore to an association which he alleged had commenced in 1675, when he (the witness) had actually carried one of the incriminating letters from Coleman to Père La Chaise in France. At the meeting of the Jesuits at the White Horse Tavern, Oates continued, two priests named Pickering and Grove were hired to shoot the King. Coleman was not supposed to be present at this meeting, but Oates went on to state that he had met him shortly afterwards in the same month, and on that occasion the prisoner approved of the scheme. One of their meetings was supposed to have taken place in the chambers of a Roman Catholic barrister named Richard Langhorne, who, according to Oates, was designated for the post of Secretary of State in the all-Catholic Government which the Jesuit conspirators hoped to introduce. Others implicated in the conspiracy were two Catholic peers, Lords Powis and Belasyse, who in actual fact were in such miserable health that they could hardly stand

on their feet. Finally, the Queen's physician, Sir George Wakeman, was alleged to have agreed to put poison in the King's medicine should the pistols of Grove and Pickering miss their mark. This evidence was corroborated by Oates's companion in perjury, William Bedloe.

As has already been mentioned, cross-examination in those days was very imperfectly understood. Nevertheless, Oates was obliged to admit that when he first saw Coleman before the Privy Council he did not know him, and it seemed extremely doubtful whether he ever really charged him before the Council with the matters to which he swore at the trial. As for Coleman, his efforts to save himself were very feeble, for he had a good alibi for the greater part of August, in which month he was supposed to be conspiring with the Jesuits in London. He contented himself with saying that Oates and Bedloe were great liars, adding that as Oates would not fix himself to particular days he would not contradict him by proving his alibi. On the other hand, in his particular case it is doubtful whether any defending counsel, however brilliant, could have explained away the corroborative effect of the evidence afforded by the letter in which the prisoner informed Louis XIV's confessor that "we have here a mighty work upon our hands, no less than the conversion of three kingdoms, and by that perhaps the utter subduing of a pestilent heresy which has domineered over a great part of this northern world a long time." Nevertheless, without the perjured testimony of Oates and Bedloe such evidence would probably not have been deemed sufficient, even in those harsh days, to justify a conviction. As it was, the verdict was a foregone conclusion. Indeed, as one of the judges put it to the jury, "You must find the prisoner guilty or bring in two persons perjured." Coleman was therefore convicted. Three days later he met his end at Tyburn, protesting his innocence to the last, and buoyed up with the hope of a reprieve through his royal master which never came.

The next trials took place at the Old Bailey, where Jeffreys occupied a seat upon the bench. They were those of Pickering and Grove, whom Oates had alleged were the would-be assassins of the King, and also a Jesuit priest called Ireland, now accused of being a party to the same murderous

conspiracy.¹ Oates and Bedloe repeated, with fresh embellishments, the preposterous story they had told at Coleman's trial. Oates asserted, for instance, that the prisoners had pistols with silver bullets, and "Grove would have the bullets to be champed, for fear that if he should shoot, if the bullets were round, the wound that might be given might be cured." Pickering protested that he had never fired a pistol in the whole of his life, and, of course, all the prisoners denied having been to a treasonable meeting at the White Horse Tavern. But their protests and denials were of no avail. Chief Justice Scroggs summed up dead against them, and all three were accordingly convicted. "You have done, gentlemen, like very good subjects," said the Chief Justice to the jury, when he heard their verdict, "and very good Christians—that is to say, like very good Protestants."

The court then adjourned, leaving Jeffreys as Recorder to pronounce the sentence. This the Recorder proceeded to do with his customary vigour when he had returned to the bench in the afternoon accompanied by some of the City justices, but in much more moderate language than that employed by Scroggs in his summing up. When the prisoners had been called to the bar Ireland, who was a member of an old family which had sided with the Royalists during the Civil War, again protested on behalf of them all that they had not been heard properly and desired to call more witnesses. This request, of course, the Recorder was bound to refuse. "I believe, Mr Ireland," said Jeffreys, "it will be a shame to all your relations that have been loyal to the King that you should be privy to the murder of that good King whom your relations so well served; and therefore, if that be all that you have to say, it will signify nothing." The Newgate gaoler and executioner, Captain Richardson, was then summoned to tie up the prisoners (and incidentally reproved "for his negligence" in not doing so immediately). Pickering said nothing, but as his companion Grove was being seized he exclaimed, "I am innocent as the child unborn."

The speech which the Recorder delivered in sentencing the three men was a sincere homily on the wickedness of their crime and the errors of the Roman Catholic creed. He began by

¹ Howell, *State Trials*, vi, 79.

demonstrating the folly of striking at the best of kings and intending the subversion of the best of religions. "Thus I speak to you, gentlemen," he said, "not vauntingly. It is against my nature to insult upon persons in your sad condition. God forgive you for what you have done, and I do heartily beg it, though you do not desire I should; for, poor men, you may believe that your interest in the world to come is secured to you by your Masses, but do not well consider that vast eternity you must ere long enter into and that great tribunal you must appear before where his Masses" (pointing to the prisoner Pickering) "will not signify so many groats to him—no, not one farthing. And I must say it for the sake of those silly people whom you have imposed upon with such fallacies that the Masses can no more save thee from a future damnation than they can from a present condemnation."

Jeffreys continued in this strain for some time, dealing in detail with the gravity of each prisoner's offence. Nor did he fail to comment on Ireland's protest that he had not had proper facilities to prepare his defence. "He had a kind sister that took care to bring his witnesses," the Recorder reminded him. "I am so far from blaming her that I do commend her. It was the effect of her good nature, and deserves commendation. But I speak to this purpose to show that there was no surprise upon him, nor his life taken away by any such thing, for he had a greater favour showed to him than is usually shown to such offenders."

His concluding remarks, still harping on Jesuit iniquity, were particularly addressed to the gaoler of Newgate:

"We do also require him whose duty it is to attend in such cases—nay, I do command him in the name of the court—that he attend upon you to give you all the comfortable assistance that he can for the advantage of your future state. And not only so, but we will certainly take care that, if you shall have any others come to you, they shall. I would not be mistaken, I do not mean any of your priests and Jesuits; but if you will have the assistance of any Protestant divines, they shall not be denied you."

"And I hope God Almighty will please to give you pardon in another world, though you have offended beyond hopes of any in this. I once more assure you all I have said is in perfect charity. I pray God forgive you for what you have done."

Then followed the medieval sentence of drawing, hanging, and quartering, with all its horrible details.

Jeffreys had been speaking for nearly half an hour. As he passed out of the ill-lit Justice Hall of the Old Bailey, with its sputtering candles, that December evening, there is no doubt that he was profoundly affected.

IV

Jeffreys found some relief from the grim and tragic monotony of the Popish Plot trials in an exciting episode in which he figured early in the New Year. About ten o'clock in the evening of Sunday, January 26, 1679, a fire again broke out in the Temple. It was the third in little more than ten years, and but for the Recorder's quickness and presence of mind it might have spread beyond the confines of the Inns of Court and involved the destruction of the whole of Fleet Street and the Strand.¹

The fire began in Pump Court, and was caused by a flaming lump of sea-coal falling from the grate on to the deal boards next the hearth in a set of chambers whose owner had gone out for the evening. It blazed away merrily, for London was in the grip of a harder frost than it had known for many years, and there were long icicles on the eaves of the houses. Unfortunately both the Thames and the flow of water from the river through the conduit pipes were frozen, so that the fire-engines would not work. An attempt was made to obtain water by passing it in buckets from hand to hand, but this method was not very satisfactory, since the water was inclined to freeze in transit. Recourse was then had to beer, which was brought up in barrels from the cellars and fed the engine until the supply gave out.

The wind soon carried the fire up Middle Temple Lane towards Fleet Street, setting alight in its trail many of the chambers in the surrounding buildings. A hasty call for assistance was sent to the City, and about midnight the Lord Mayor and Sheriffs arrived at the Inner Temple gates with sword of

¹ *Calendar of Inner Temple Records, passim*; N. Luttrell, *A Brief Historical Relation of State Affairs from September 1678 to April 1714* (1857), i, 7. A vivid account of the fire is given by Roger North in his autobiography (*Lives*, iii, 37 *et seq.*).

office borne erect. But a group of gentlemen of the Inn preferred to risk the destruction of their buildings rather than sacrifice their pride, and, true to the tradition which Jeffreys had insisted on upholding ten years previously, they refused to admit the Lord Mayor and his companions. The Lord Mayor, who was considerably annoyed by this reception, thereupon went off to a neighbouring tavern, where he is reported to have got drunk. He had his revenge too, for on emerging from the tavern pleasantly intoxicated he encountered the municipal fire-engine about to enter the Inner Temple. He immediately stopped it and sent it back to the City.

The fire had now reached Hare Court, and was rapidly approaching Fleet Street. Jeffreys, who had come out with the other Benchers and leading members of the Inn to do what he could, realized that the flames must spread to the houses of Fleet Street unless a gap were made by blowing up some of the buildings in Hare Court. He therefore procured as much gunpowder as he could, and had a train laid on the spot. The Duke of Monmouth, who had come in to help, was heard to say that "he never met with people so willing to be blown up as these lawyers."¹ Lord Feversham, who was also standing by as a helper, narrowly escaped being involved in the resulting explosion. As it was he was hit by a falling beam, and his skull had subsequently to be trepanned. Roger North has blamed the authorities for proceeding with what he calls "such a destructive haste," but the fact remains that the gap which was made stopped the fire at that point and saved both Fleet Street and the Temple Church.²

So far Jeffreys had managed to retain a fair measure of popularity in the City, in spite of the fact that he was the known recipient of royal favour, for the King was well enough liked at the Guildhall. The Recorder now did something which offended many of the Common Council. He accepted the post of legal adviser, or Solicitor-General, to the Duke of York.³

¹ North, *Lives*, iii, 41.

² The sum of four pounds was later given by the Inn "to David Lumsden, grocer, for a barrel of gunpowder for the use of the Inner Temple, in the time of the late fire, procured and taken up by Sir George Jeffreys of him for the said use and affirmed to be so by the said Sir George" (*Cal. Inner Temple Rec.*, iii, 170).

³ J. G. Muddiman, *The Bloody Assizes* (1929), p. 149 (quoting from a contemporary newsletter). The date of this appointment was January 1679, and not 1677, as stated by Woolrych, Campbell, and Irving.

The appointment was an honorary one and the duties not unduly onerous, but it came at an awkward time for Jeffreys. It was in the middle of the Popish Plot trials, and the Duke's unpopularity as a Catholic was becoming general. Furthermore, two days before the fire in the Temple occurred the King had been persuaded to dissolve the so-called Cavalier Parliament, which had been intermittently in session for eighteen years, but which now, thanks to Shaftesbury and his large following in the country, had ceased to represent the constituencies in any way. The Whigs proceeded to conduct a whirlwind election campaign, in which they confidently asserted they would sweep the country, and made no secret that when returned to power they would pass a Bill to exclude the Duke of York from the succession to the throne. Danby had previously been impeached on account of his part in the secret negotiations with Louis XIV which had recently come to light, and he had been sent to the Tower, where he vainly pleaded the King's pardon. The principle of Ministerial responsibility to Parliament was now established, at Danby's expense, for the first time in our history, and the Whigs came into power after a tremendous victory at the polls. As for Jeffreys, he compromised himself in the eyes of the City by publicly associating himself with the Duke of York at this time, but he had sufficient confidence in his own abilities to take the risk with little or no hesitation. Thus began an ominous association which was first to advance Jeffreys to the summit of his profession and then to consign him, like Danby, to the Tower.

While the Whigs were decorating the hustings with "No Popery" banners the hunt continued for suspected Papists, and incidentally for the murderers of Sir Edmund Berry Godfrey. Four people were already in custody in connexion with this crime—three servants at Somerset House, the Queen's residence, named Berry, Green, and Hill, who were charged with having committed the murder, and a young man named Atkins, in the service of Samuel Pepys, who was accused of being an accessory. Their trials came on towards the middle of February 1679, and Jeffreys was, as usual, briefed by the prosecution.

Berry, Green, and Hill, who were arraigned together, were all Catholics in humble circumstances, upon whom Shaftesbury and his friends found it convenient to fasten responsibility for

the mysterious crime which had aroused the wrath of the nation. Berry was a porter at Somerset House, Green a carpenter, and Hill a servant of Dr Godden, the treasurer of the Queen's Chapel in Somerset House. They had been arrested on the information of a certain Miles Prance, a Catholic silversmith, who had himself been arrested previously for complicity in the affair, and during the time he was in custody had admitted under pressure to having kept watch while the murder was being perpetrated. He subsequently declared this story to be false, but on being loaded with irons and treated with extreme rigour in the 'condemned hole' in Newgate he reaffirmed the truth of his accusation. "You had better confess than be hanged," said Bedloe, the other Crown witness, to him; and so Prance finally consented to turn king's evidence.

Briefly the case for the Crown was that for some days before his death Sir Edmund Godfrey had been watched by the prisoners. Two of them, Green and Hill, had actually called at his house to find out where he was going on the fateful 12th of October, when he failed to return. While walking home along the Strand the unfortunate magistrate was supposed to have been decoyed into Somerset House, through the gate at which Berry was porter, under pretence of stopping a fight that was going on inside, and there murdered. The body was carried first to Hill's lodging and then to another room in Somerset House, where the other Crown witness, Bedloe, claimed to have seen it. Some days later the body was secretly removed from Somerset House in a sedan chair, and eventually conveyed on horseback to Primrose Hill, where it was discovered.

Such was the improbable tale related by Prance, and stranger still is it that the court and jury should have believed it. Hill's protest that it was perjured by the witness's own confession was shamelessly overruled by the Lord Chief Justice. To the testimony of the deceased magistrate's housekeeper that Green and Hill had called upon her master shortly before his disappearance both these prisoners made an emphatic denial. "Upon my soul I never saw him in all my life," exclaimed Green. Hill too had a perfectly good alibi, but the court virtually refused to listen to it. Thus were all three prisoners condemned on the flimsiest of evidence—and perjured evidence at that, which by rights ought not to have hanged a cat.

The case for the Crown was really conducted by the Attorney-General, the quick-tempered Sir William Jones, and Jeffreys took little part in it. He did, however, intervene during the examination of one of Hill's witnesses, and his sallies drew the only burst of laughter which occurred during the otherwise grim proceedings. The witness was Mary Tilden, a niece of Dr Godden, in whose house she was living when the murder was committed. She deposed that the prisoner Hill, who was employed as a servant in the house, was at home throughout the evening of Saturday, October 12, on which Godfrey was supposed to have been murdered.

"Are you a Roman Catholic?" asked the Lord Chief Justice.

"Yes."

"Have you a dispensation to eat suppers on Saturday nights?"

Before the witness had time to reply Jeffreys got up with slightly shocked expression. "I hope," he said, referring to Hill, "you did not keep him company *all* night after supper."

"No, I did not!" answered Mary Tilden tartly; "but he came in to wait on the table at supper."

The court's sense of propriety was seemingly satisfied, but a little later the Lord Chief Justice returned to the subject.

"Maid, can you say he was always at home at night?"

"I can say he was never abroad after eight at night."

"Why," interposed Jeffreys again, "you did not watch him till he went to bed, did you?"

"We were always up till eleven o'clock at night," was the witness's cool reply, and Jeffreys got no further satisfaction from her.

In due course all three prisoners were convicted, but to suit the convenience of the court sentence was postponed until the following day. Then they came up on a motion for judgment, and Jeffreys, who moved the court, first of all reflected on a barbarous custom of the times, which he reprobated in strong terms. As the prisoners were being taken back to Newgate on the preceding day the tipstaff, an officer of the court, set upon them and stripped them of their upper garments, saying the clothes were his fee, according to custom. On inquiry the judges ascertained that there was no such custom, and the tipstaff was duly brought to the bar and admonished.

"This seems a very barbarous thing, to take the clothes off their backs." "It doth so, brother," agreed the third member of the bench, Justice Dolben, "and they must be restored." Restored the clothes accordingly were; and thus, though innocent, the prisoners at least had the satisfaction of going to their execution decently clad.

Immediately after Jeffreys' motion for judgment the prisoner Samuel Atkins was put to the bar.¹ He was charged with being an accessory to the murder of Sir Edmund. The flimsy case for the prosecution rested on the evidence of a certain Captain Charles Atkins, and also on that of the notorious Bedloe, who stated that he had seen the prisoner standing over the body of the dead man and consulting with the murderers how to dispose of it.

The first witness swore that the prisoner had approached him, complaining how Godfrey had injured his master and asking the witness to join with a seaman named Child to commit the murder on behalf of his master.

"What is Mr Atkins's master's name?" asked the Lord Chief Justice.

"Mr Pepys."

"What, Mr Pepys of the Navy?"

"Yes, my lord."

This answer created exactly the impression which the Whig engineers of the Popish Plot intended it should, since they hoped ultimately to implicate Pepys and so further discredit the Duke of York, with whom Pepys had formerly worked in close association.

The prisoner was a Protestant, but the Attorney-General had endeavoured to strengthen his case by showing him to be a Roman Catholic. "Now, my lord," he said, addressing the bench, "because it seems a strange thing that Mr Atkins, who says he is a Protestant, should be engaged in this business, we have a witness here to prove that he hath been seen often at Somerset House at Mass, and so he is a party concerned."

The witness turned out to be a lad of seventeen who was brought into court at this moment. The prisoner was standing among the crowd at the bar (there was no dock in those days), and he now showed considerable presence of mind.

¹ Howell, *State Trials*, vii, 231.

"What religion are you of, boy?" he shouted out.

"A Protestant," replied the boy, not realizing that his question was the prisoner.

"Do you know me?" continued Atkins.

"No," came the hoped-for reply.

Thus was this witness neatly discredited before he could be sworn. In vain did Jeffreys try to cover up the blunder. "My lord, I perceive it was a mistake," he observed to the Lord Chief Justice. "It was somebody else. We will proceed to other evidence."

The other evidence was that of the perjured Bedloe, who, having discovered that the prisoner had an unshakable alibi, now proceeded to hedge and declined to identify the prisoner with the man he saw bending over Godfrey's body. It was clear that the case for the Crown was breaking down. The only other witness for the prosecution was the prisoner's old schoolmaster, who deposed to having invited Atkins to dinner at "Mount Horeb," and that the young man failed to keep the appointment—but this admission proved little. "Where is this Mount Horeb?" asked the Lord Chief Justice. Jeffreys, who knew how to enlighten judicial ignorance as well as any counsel of to-day, hastened to explain that it was an eating-house in Pudding Lane kept by one Mr Appleby.

The court now informed the prisoner that he had liberty to defend himself. Fortunately he was able to make good use of it, for his master, Mr Pepys, had his witnesses ready. From the evidence of one of them, Captain Vittles, it soon became clear that the reason why Atkins failed to keep his dinner engagement was that he had other fish to fry. These were "a couple of gentlewomen," friends of the prisoner, who were brought by him to the captain's yacht at Greenwich, and there appropriately entertained with the assistance of several bottles of wine, "and, the wine being good and just come from beyond seas, we drank till seven of the clock, and I would not let them go." After the prisoner's boat, which was waiting to take Atkins and his two friends, had been dismissed the party was continued, "and so about eight or nine o'clock we had drunk till we were a little warm and the wine drinking pretty fresh, and, being with our friends, we did drink freely, till it was indeed unreasonable—I must beg your lordship's pardon, but so it was."

About half-past ten the prisoner and his friends were placed in the captain's boat "very much fuddled," and were put ashore at Billingsgate about an hour later.

When this story had been corroborated by the boatswain in charge of the small boat the prosecution realized that it had no case. The Lord Chief Justice thereupon directed the jury to acquit, and a verdict of not guilty was accordingly brought in.

"God bless the King and this honourable bench," declared Samuel Atkins, sinking to his knees.

Thus did the plot-makers receive their first check.

v

It was fortunate for the Duke of York that he had secured the services of such a competent legal adviser as Jeffreys, since he was now able to leave the country with the knowledge that his affairs were in good hands. Indeed, James had been obliged to depart for reasons of personal safety, for the public agitation against him had risen to such a frenzy that even the Catholic lords imprisoned in the Tower had petitioned him to withdraw to some neighbouring country. Thus by the time the first Whig Parliament had assembled in March 1679 and passed a vote of distrust in him James was safe at The Hague. Nevertheless, on the subject of the Duke's political future the Whig counsels were not unanimous. Shaftesbury and his immediate following were for complete exclusion from the succession. A rival group, led by the "Trimmer" Earl of Halifax, wished when the time came to retain him as a nominal monarch, but to cut out his executive functions to Parliament. But Shaftesbury carried the party to the point of exclusion, and in May the appropriate Bill was introduced. The King, who would consent to no more than the principle of limitation, checkmated this move by proroguing and then dissolving Parliament. Brief as was the life of this first Whig Parliament, it was not altogether barren, for during its session the Habeas Corpus Act reached the Statute Book. But even this great measure of personal liberty was only enacted through a piece of luck: the tellers in the House of Lords counted one fat lord as ten, and subsequently neglected to change their figures when making up the division list.

While Shaftesbury and his friends were sparring away with the Royalists in Parliament Jeffreys continued to be kept busy at the Old Bailey, for the Popish Plot trials had not yet run their course. In June Richard Langhorne, the middle-aged Catholic barrister, whose chambers were hard by those of Jeffreys in Middle Temple Lane, came up for trial, along with a batch of Jesuit priests.¹ Oates and Bedloe told their old story, and, although Langhorne, as might be expected of a lawyer, showed up many of the glaring discrepancies in which their evidence abounded, the tale was in the main accepted by an astonishingly credulous bench. The substance of their evidence was that the Jesuits had been guilty of the treasonable conspiracy sworn to in the earlier cases, and that Langhorne was also a party to it, acting as a sort of registrar of their resolutions, and in particular receiving and distributing a number of commissions issued by the General of the Jesuits to a variety of persons of distinction in England. Langhorne had only seen Oates once or twice in his life (when he came to his chambers in 1677 to give him a letter from his son, who was in Spain), and he had never seen Bedloe at all; but both testified to having had frequent interviews with Langhorne in 1678, when treasonable designs were discussed and committed to paper in the shape of letters from Coleman and himself to Père La Chaise and other notable Catholics on the Continent. Much turned on the now famous "consult" of Jesuits at the White Horse Tavern on April 24, 1678, and Langhorne's friends brought no fewer than sixteen witnesses from the Jesuit college at Saint-Omer, who swore that Oates was with them at their seminary on that date. But, unfortunately for the prisoners, neither judges nor jury attached any weight to the oaths of Jesuits, since they believed that Jesuits were permitted to lie in the interests of their Church. Other would-be witnesses for the prisoner were beaten by the mob before they could enter the court, and thus were unable to give their testimony.

In this atmosphere, loaded with partiality and prejudice, there was no hope for any of the prisoners. Conviction followed almost as a matter of course, and the judges then retired, leaving Jeffreys to do his customary duty and pronounce sentence. Now, Jeffreys had known Langhorne, and had had

¹ Howell, *State Trials*, vii, 311, 418.

some professional associations with him at the Bar. The words in which the Recorder referred to him particularly were full of feeling :

“There is one gentleman that stands at the bar whom I am very sorry to see with all my heart in this condition, because of some acquaintance I have had with him heretofore : to see a man who hath understanding in the law, and who hath arrived to so great an eminency in that profession as that gentleman hath done, should not remember that it is not only against the rules of all Christianity, but even against the rules of his profession to attempt any injury against the person of the King. He knows that it is against all the rules of the law to endeavour to introduce any foreign Power into this land. So that you sinned both against your conscience and your own certain knowledge.”

Jeffreys was careful to add that there was no doubt in his mind that all the prisoners had been fairly convicted.

When their quarters had been duly consigned to the King’s disposal and their souls to God one of the prisoners requested on behalf of them all that their friends might be allowed to visit them in prison.

“Yea,” replied the Recorder, “it is fit that they should have the comfort of their friends and relations ; and God forbid but we should do all we can to make their passage as comfortable as may be. But you must keep that decorum that becomes such as are in your condition. You know you are under the public notice of the world ; therefore you must use the liberty that is granted to you with that moderation and prudence that it is fit to use such a privilege with, for I shall not deny you any lawful favour.”

Then Langhorne spoke up.

“Sir, there will be more people come to me than ordinary in regard of their business that I have had in my hands. I desire they may have the liberty to come to me.”

“I would not deny Mr Langhorne anything I could grant him. If it be any business that any person would have an account of, which you have been concerned in for them, they may be permitted to come to you.”

The gaoler of Newgate, Captain Richardson, said he understood nobody was to see the prisoner save in his presence.

“Yes, my lord,” said Langhorne to Jeffreys, “I hope my wife and children may.”

"Yes," replied Jeffreys, "God forbid but he should have his wife and children with him."

"Or any others that come about business," added Langhorne.

"Yes," agreed the Recorder, "with the caution I have given you."

It is surprising that Langhorne, whom we now know to have been innocent, should not have put up a better defence. He was a barrister who had been in practice for some twenty years, and he must have been thoroughly familiar with the procedure at criminal trials. For example, if he had cross-examined Oates as to the arrangement of his chambers, where some of the treasonable meetings were alleged to have taken place, he could easily have proved that they were such that Oates could not possibly have seen and heard there to what he deposed. But he made no move in this direction. Similarly, when the hostess of the White Horse Tavern was being examined he might have asked her who precisely did come to her premises on April 24, 1678. Her answer might have proved that the famous Jesuit "consult" did not take place there at all, a fact of which the bench and nearly every one else in court except the prisoners were then ignorant. But these things were not to be, and Langhorne was destined to suffer with the rest.

The sentence, with all its horrible details, was carried out within the next few days in the case of the priests. But Langhorne, whom the King believed to be innocent and hoped to save, was respited for several weeks. During this time Charles pleaded with the Privy Council for his life, but his efforts were in vain against those of Lord Shaftesbury, who lusted for the prisoner's blood. Thus Richard Langhorne followed his companions to Tyburn, innocent, like them, of the crimes for which a partisan court and jury had condemned him.

While the King was trying without success to save Langhorne, another victim of the plot, who concerned his Majesty much more closely than the unfortunate Catholic barrister, was standing his trial at the Old Bailey.¹ This was Sir George Wakeman, the Queen's Catholic physician, whom, it will be remembered, Oates had accused of conspiring to murder the King by putting poison in his medicine. He was indicted along with a Catholic gentleman named Rumley and two Benedictine

¹ Howell, *State Trials*, vii, 591.

monks, Marshal and Corker, who were also alleged to be in the conspiracy. The plot supporters further hoped to implicate the Queen by proving that she had consented to her husband's summary removal in this fashion on account of his known infidelities. Charles, to his credit, refused to lend an ear to such a monstrous accusation, and shortly before the trial was due to begin he sent for Chief Justice Scroggs, who was to preside, and told him so, and probably more. At all events, Scroggs had not taken his seat on the bench for many minutes before he showed himself quite free from his usual discrimination against Catholic prisoners and even anxious to take Sir George Wakeman's part. Jeffreys, who probably knew that something of the kind was afoot, also intervened early in the proceedings to secure the prisoners the unwonted privilege of having pens, ink, and paper with which to make notes for their defence.

This time Oates and Bedloe cut truly sorry figures, for Wakeman and the other prisoners, who all defended themselves with considerable vigour, were able to cast grave doubts upon their testimony and in some instances actually to expose them as lying witnesses. For example, Oates deposed to being present in Somerset House when Wakeman in the Queen's hearing agreed to take £15,000 to poison the King, and, furthermore, to seeing a receipt for that sum in the prisoner's handwriting. According to Oates, he actually heard the Queen say "that she would assist them in the propagation of the Catholic religion with her estate, and that she would not endure these violations of her bed any longer, and that she would assist Sir George Wakeman in the poisoning of the King." Wakeman thereupon reminded Oates that when they were subsequently confronted face to face before the Privy Council Oates not only failed to recognize him, but asserted that he had never seen him before in his whole life. Oates then began to prevaricate and bluster, saying he was ill and that his recollection as to what had happened was otherwise, and that he had drawn the attention of the Council to the receipt and a letter in Wakeman's handwriting. "Then," asked Scroggs, "why was the prisoner allowed to remain at liberty if you charged him?"

"To speak the truth," replied Oates, losing his head, "they were such a Council as would commit nobody."

This answer brought down instantaneous reproof on the witness's head.

"That was not well said," remarked Jeffreys.

"He reflects on the King and all the Council," said Wakeman.

"You have taken a great confidence," said Scroggs, addressing the witness, who was now as pale as ashes, "I know not by what authority, to say anything of anybody."

Having effectively silenced Oates, the Chief Justice proceeded to sum up considerably in favour of the prisoners. His words had none of his habitual bias against Papists and all their works, though it is true that he spoke as if the words he uttered were part of an uncongenial task. Indeed, he did not pretend to go over all the evidence, and in the middle of his summing up he appealed to his brethren on the bench to supply any lapses of memory he may have had. But his brother judges wisely held their tongues and allowed the Chief Justice to proceed uninterrupted and exhort the jury to weigh the utterances of Oates and Bedloe with extreme care. "Let us not be so amazed and frightened with the noise of plots," was his final warning, "as to take away any man's life without any reasonable evidence."

As soon as the Chief Justice had finished speaking Bedloe got up and croaked, "My lord, my evidence is not right summed up."

Scroggs' rejoinder showed his contempt. "I know not by what authority this man speaks."

The judges then retired, leaving Jeffreys as Recorder to receive the verdict. The trial had already lasted eight hours—according to Evelyn, the diarist, who had come to see what a Popish Plot trial was like.¹ After the jury had been in retirement for a further hour the foreman returned and informed the Recorder that the other members wished to know whether they could bring in a verdict of misprision, or concealment of treason.

"No," replied Jeffreys very properly. "You must either convict them of high treason or acquit them."

"Then take a verdict," said the foreman. When the jury had answered to their names their foreman gave their verdict, which was—not guilty.

¹ iii, 33.

"Down on your knees!" shouted the gaoler, Captain Richardson.

"God bless the King and this honourable bench," murmured Wakeman, as he sank to the required posture. The other prisoners followed suit, and thanked God for their deliverance.

The result of the trial was a severe check for Oates and his rascally crew of informers and perjurers; and, although many of the public under their influence were inclined to regard Wakeman's acquittal as a perversion of justice at the prompting of royalty, it marked the beginning of Oates' discredit and the turn of the tide in favour of the persecuted Catholics. For the first time Jeffreys began to believe that Oates might not have been telling the truth, and the Recorder's newly formed connexion with the Duke of York, coupled with what he had observed at Wakeman's trial, strengthened this view. If, as he was beginning to think, Oates and Bedloe had perjured themselves, then, indeed, he was mightily sorry that such a monstrous miscarriage of justice should have happened. But, then, had not Coleman's case proved the existence of some sort of plot? The fact was, as he subsequently admitted, they had all been "surprised into a belief" as to its size and extent.

VI

It was a little more than ten years since Jeffreys had been called to the Bar; and he was now, at the age of thirty-three, in the front rank of his profession, a knight of the realm and high in favour at Court. His professional earnings cannot have amounted to less than £5000 a year, a very large figure for those days. His expenditure, as befitted a City Recorder, appears to have been on a correspondingly generous scale, if we can judge by the numerous bills and accounts incurred by him at this time—and, indeed, throughout his whole career. These accounts, which owe their preservation to a fortunate accident, show that he thoroughly appreciated the effect of calculated display. Wherever he went he entertained lavishly, and he further laid out large sums on various investments and on improving the properties which he had acquired. He greatly increased the value of his house in Aldermanbury, he made extensive additions and alterations to the mansion at

Bulstrode, and about the beginning of 1679 he took over a second set of chambers, which were opposite those he already occupied at 3 King's Bench Walk. Nor was he devoid of cultural interests, for we know from the same source that he bought some good furniture, as well as some fine books and pictures.

We may here examine these private accounts a little more closely, for they throw a fresh and interesting light upon Jeffreys' character and personality.¹ As we have seen, he could never at any time, even in his student days, be called poor, in spite of the modest allowance which his father is said to have made him. For the chambers in King's Bench Walk which he took on becoming a fully fledged barrister in 1668 he paid a premium of £230.² In his first year at the Bar his fees were sufficient to enable him to purchase a sixth share in the good ship *The Dextra*, a London vessel which was probably engaged in the lucrative trade with the West Indies.³ He seems to have gained some useful connexions as well as profits from this venture, since a year or two later we find him being consulted professionally on certain questions of marine insurance.⁴ In 1670, his second year in practice, he was able to buy a house and farm called Sydalch, in his native Denbighshire, apparently as an investment, since there is no evidence that he ever resided there.⁵

Six years later, in 1676, came the purchase of the estates of Bulstrode and Fulmer, in Buckinghamshire. It is not known exactly how much Jeffreys paid for these properties, since the purchase money was spread out over a number of years, but the price can hardly have been less than £10,000. He spent

¹ Many of these manuscripts are in the possession of Miss M. Melville Balfour, and I am indebted to her for much additional information concerning them, as well as for permission to quote from them. Others were sold by auction at Sotheby's in March 1929 and February 1936. Miss Balfour has published an excellent account of the collection ("The Private Papers of Judge Jeffreys") in the *Law Journal* (lxviii (1929), 330, 349, 368, 391, 411, 429). The papers were formerly in the possession of the descendants of Sir Robert Clayton, Jeffreys' principal trustee, and they were discovered in an outhouse in Buckinghamshire, where they had apparently lain undisturbed for two centuries.

² See p. 37 n.

³ Bill of sale dated July 30, 1669.

⁴ On May 4, 1674, he gave a legal opinion upon the insurance of the ship *Aleppo*, trading between Corisco and London via Barbados.

⁵ On June 22, 1670, he paid £100 in part-purchase, giving "a Bond unto G. Gwillim" for the remainder. In the following September he made a further payment of £240.



JEFFREYS AS RECORDER OF LONDON
Painter unknown
National Portrait Gallery

To S^r George Jeffreys August 29th 1677 /

1 Countermarch &c	0 2 6
1 Madecraft &c	0 2 6
1 Tausers Travellers	1 0 0
for binding Cooke on	0 2 6
1 History of Sir Quixote	0 10 0
1 Endworths System	8 5 0
1 Sprats Common	0 1 0
1 Dalton's Justice	0 12 0
1 Hals Ples of Crim	0 2 6
1 Set of Acts	0 4 0
1 Barrows & Brinons	0 4 0
1 Dalton's Justice	0 12 0
1 Set of Acts	0 3 0
1 Set of Papers	0 0 4
1 Hookes Narratives	0 0 6
1 Statutes of Ireland	1 10 0
1 Hackwells Library of Subject	0 2 6
1 Confessions of Liberty of Subject	0 2 6
1 Pullen de la Par	0 12 0
1 Hackwell of Parliaments	0 2 0
1 Paulsons abridgment	0 10 0
for Votes of May 16 th & 17 th	0 1 0
1 Frances Narratives	0 1 6
1 State of British Church	0 5 0
1 Hals Ples of Crim	0 0 6
1 Shakespeares Plays	2 0 0
1 Ben Jonsons Plays	1 0 0
1 Drydens Plays	1 0 0
1 Beaumont & Fletchers Plays	1 10 0
1 List of Parliament Men	0 0 2

August 5th 1679

13 12 0

considerable sums on work "don at Boulstrode house" and at the "letell house at Jarats Cras," probably a gate lodge. Throughout the summer and autumn of 1676 he had an army of labourers, glaziers, carpenters, masons, and bricklayers busy fitting up the principal mansion for his reception: among the building materials used were forty-five pounds' worth of bricks, "2 Iron Cullums," "67 foot of Dutch tyles," and "3000 Lath nayles." One of the contractor's bills came to over seventy pounds, excluding "14 weeks for myself, what you please."

His large town house in Aldermanbury and his "Chambers att y^e Temple" received extensive renovation about the same time. In this connexion there are numerous bills for glazing, which suggests that he may have been rather ungentle with his windows. Indeed, both premises seem to have been in constant need of repair, for there is one bill "for mending the house by the year." In Aldermanbury he had a number of paintings, including "severall pictures" specially commissioned from a foreign artist named Michael Fortin and a drawing of Chief Justice Scroggs. Here, too, most probably hung the interesting portrait of himself as Recorder which completely belies the coarse and ferocious Jeffreys of popular imagination, revealing instead the finely chiselled features and intelligent expression of a man undoubtedly possessing some culture and sensibility.¹

Jeffreys had received a good education, and it early left its stamp upon him, as we have seen from the romantic story of his first marriage, which in itself shows that he was far from being incapable of higher feelings. A bookseller's bill for this period which survives proves that he had considerable literary interests, which he kept up. Indeed, the account with Mr John Starkey, "at the sign of the Mitre," in Fleet Street, shows that he had a distinctly catholic taste in reading. Besides such well-known legal works as Dalton's *Country Justice* and *Coke on Littleton*, he bought, among other books, Rushworth's *Historical Collections*, Burnet's *History of the Reformation*, a French novel or "Fam'd Romance" called *Pharamond*, and the dramatic works of Beaumont and Fletcher, Dryden, Ben Jonson, and Shakespeare, besides "7 New Plays" whose titles are not specified. His

¹ This portrait is now in the National Portrait Gallery. It is reproduced in this book, facing p. 84.

edition of Shakespeare, for which he paid two pounds, is the most expensive item on the list, and we may safely assume that he was familiar with its contents, for in at least one notable trial he showed it. "Ask him what questions you will," as he told counsel to examine a witness, "but if he should swear as long as Sir John Falstaff fought I would never believe a word he says."¹

By the time the Popish Plot trials began Jeffreys had laid aside the mourning attire which he wore for his late wife, and was replenishing his wardrobe. In February 1679 he bought "one Persian Coate," for which he paid ten shillings, "one ffrocke ditto," which cost him eight shillings, several "dimyty" vests, and "one fflow[ere]^d Silk Go[w]n," which cost £1 18s. He paid nearly as much two months later to a woman tailor "for making 2 coats and all materialls."

There was a good reason for this sartorial indulgence in that Jeffreys was contemplating an important step affecting his domestic future. He proposed to get married again.

¹ Sir John Fox, *The Lady Ivis Trial* (1929), p. 29. Cf. *King Henry IV*, Part I, Act V, Scene iv. An interesting article on the books purchased by Jeffreys according to the above-mentioned bookseller's bill was written by the late Mrs M. C. Balfour ("‘Bloody’ Judge Jeffreys in a New Role"), and appeared in the *Bookman's Journal* (xvii (1929), 3).

CHAPTER IV

CHIEF JUSTICE OF CHESTER

IT was hardly to be expected that a widower with a growing family and expanding ambitions such as Jeffreys possessed should not endeavour to find another wife. But if his first marriage had been one of inclination Jeffreys' second was dictated more by motives of personal interest and expediency. The second Lady Jeffreys was the widow of a Welsh knight, Sir John Jones, of Fonmon Castle, Glamorganshire,¹ and the daughter of Alderman Sir Thomas Bludworth, M.P. She is described in the notice of intended marriage as "Lady Ann Jones of Maiden Lane, London."² She cannot have been long married to her late husband, though long enough to have borne him a daughter: indeed, at the time of her engagement to Jeffreys she was barely of age.³

Jeffreys' prospective father-in-law, Sir Thomas Bludworth, was a man of considerable means and power in the City of London, and also in the borough of Southwark, which he had represented in the House of Commons since the Restoration. He filled the office of Lord Mayor during the Great Fire, and he is chiefly remembered for the manner in which he lost his head on that occasion. According to the genealogist Le Neve, "he, having been drinking overnight and loath to rise, said, when called between sleep and waking, he could piss it out."⁴ Samuel Pepys, who considered him "a silly man," records how he met him in the street, "like a man spent," with a handkerchief about his neck. "Lord, what can I do?" he exclaimed breathlessly. "I am spent; people will not obey me. I have

¹ Sir John Jones (*d.* October 1678) was a son of Colonel Philip Jones, one of the Protector Cromwell's most trusted counsellors and a member of his House of Lords (*Dict. Nat. Biog.*, xxx, 151). Ann Bludworth was his second wife (G. T. Clarke, *Genealogies of Glamorgan* (1886), p. 215).

² Maiden Lane, in the City, where her father had his town house, was subsequently merged in Gresham Street.

³ Since she was baptized at St Dionis Backchurch on December 17, 1657, she was twenty-one at this time. Curiously enough, the notice of intended marriage gives the ages of both bride and bridegroom incorrectly—hers as twenty-three and his as thirty-two (instead of thirty-four).

⁴ *Pedigrees of the Knights*, p. 48.

been pulling down houses; but the fire overtakes us faster than we can do it.”¹ For his pusillanimous conduct Bludworth was called to account at the conclusion of his term of office, and some years later Titus Oates suggested that he had actually been in league with the Papists in firing the City. In the anonymous account of the Aldermen of London which was written for the King’s guidance in 1672, and which there is reason to believe was the work of Jeffreys himself, Bludworth is thus described: “His greatest misfortune was that he was Mayor when London was burnt down, but he is a zealous person in the King’s concerns, willing, though it may be not very able, to do great things.”² But, however much he may have been regarded as a dunderhead, there is no doubt that his daughter Ann was a good match, and brought her second husband a comfortable dowry.

A letter written by Sir Thomas Bludworth from his country house near Leatherhead to Jeffreys during the engagement gives a good impression of this genial but rather muddled personality. It is an interesting letter, but full of characteristic obscurities and omissions.³

THORNCROFT,
6 May [16]79

SIR,

Your messenger brought me a real cordial at a time I needed it, having had trouble added to my indisposition. To think of the dull [*sic*] and unmannerliness of my servants to see such weather and not to provide a coach for you, which I and my wife called for, though it was too late and past redemption which we count all to be a crime; but we hope you, being so well versed in pardoning and we in succeeding to mention [*sic*], you will add this to the rest that you allow.

The repetition of the reality and sincerity of your affection to your mistress is to me, and I do believe to all her relations, without any the least cloud or question, and hath my hearty prayers that it may have a happy and hearty return whereof I see not to the contrary, God giving his blessing which I shall never cease to implore, my interest therein being so great. The great mutations that are like to be and disputes are matters of weighty consideration to sober minds; God order all for the best, though my fear is we see not the worst of things or times.

¹ Pepys, v, 347, 419; Sharpe, *London and the Kingdom*, ii, 415-418.

² *Gentleman's Magazine*, xxxix (November 1769), 515. See above, p. 47.

³ *Law Journal*, lxxii (1929), 198. The original is in the possession of Miss M. Melville Balfour.

If my health doth compel me to stay my company and keep your mistress from you till Monday (as I believe it must), I pray put it upon my score who will promise to redeem it for time to come to your better advantage and satisfaction; and if in the meantime your joys be not so full as people give you, make it up with thinking that the time will come.

And if to this favour and trouble you will add the relation of what passes and to send it to my house, to be sent me on Saturday, though it be any time before 9 o'clock at night, it will get a conveyance to me Sunday morning and quicken my devotion to the Almighty for public peace and to you and your temporal and eternal joys and peace.

Sir,

Your most affectionate friend and servant,

THO. BLUDWORTH

My wife desires her respects may be joined to mine, but for the rest of my company I leave them to themselves being of age.

Most previous writers on the subject have asserted that Jeffreys married his second wife within a few months of the death of his first, and cite this behaviour as an example of his insensibility and indifference to the memory of the first Lady Jeffreys.¹ Statements to this effect are wide of the mark, since not only was Jeffreys exceedingly devoted to his first wife, but he waited for over fifteen months before conducting her successor to the altar. Reference to the records in the custody of the Bishop of London shows that Sir George Jeffreys and Lady Ann Jones were married by special licence at the church of St Mary the Virgin, Aldermanbury, on June 10, 1679.²

The second Lady Jeffreys was reputed to have a sharp tongue, and the report went that it was not long before she was quarrelling bitterly with her husband. In the words of a lampoon, entitled *A Westminster Wedding, or the Town Mouth*:

¹ Woolrych, Campbell, Irving, and Schofield in their biographies all give the date of Jeffreys' second marriage as May 1678—that is, only three, instead of fifteen, months after the death of his first wife. This has been conclusively disproved by Miss M. Melville Balfour in an informative article ("An Incident in the Life of a Great Lawyer") in the *Law Quarterly Review* (xli (1925), 71).

² Harleian Society Publications, xxvi, 302; Hist. MSS. Comm., Report VII, *Verney Papers*, p. 472; *Law Quarterly Review*, loc. cit. The requisite allegation to enable the ceremony to take place at the church of St Mary the Virgin, Aldermanbury, appears in the Bishop of London's Registry, but, owing to an oversight not uncommon in those days, the ceremony itself was not recorded in the parish register of St Mary's Church.

alias the Recorder of London and his Lady,¹ which appeared about this time :

'Tis said when George did dragon slay,
He saved a maid from cruel fray :
But this Sir George, whom knaves do brag on,
Missed of the maid and caught the dragon.

This lampoon goes on to give credence to a popular rumour which reflected on the lady's chastity. Jeffreys' cousin Trevor (Sir John Trevor, as he had now become) was supposed to be her lover, and was said to have actually made her pregnant shortly before her marriage to the Recorder. Jeffreys was further supposed to have discovered this unpalatable news from Chief Justice Scroggs, or "Clodpate," as he was irreverently described.

The date of the birth of the first offspring of this union was not lost upon the gossips of the day. It was exactly eight months after the marriage, which led the curious to observe that the second Lady Jeffreys had been "brought to bed of a daughter much too early for a common calculator to say otherwise than that there had been a mistake somewhere."² But whether paternity could be properly ascribed to Sir John Trevor we have no means of knowing. Whatever be the truth of the matter, it certainly provided an interesting topic for comments, and Jeffreys was frequently reminded of it in after-years.

On one occasion the Recorder was remonstrating with a woman witness who had given her evidence pretty vigorously for his opponents in a case he was arguing.

"Madam," he said, "you are very quick in your answers!"

"As quick as I am, Sir George," came the reply, "I was not so quick as your lady."³

II

The trial of Sir George Wakeman proved to be a turning-point in Jeffreys' career. The City, fired by Shaftesbury's repeated assertions that the verdict was a piece of Royalist wire-pulling, tended to side with the country party in the

¹ Woolrych, p. 37.

² The child, named Ann after her mother, was baptized on the same day, February 10, 1680 (*Registers of St Mary the Virgin, Aldermanbury*, ii, 194).

³ Woolrych, p. 37.

Exclusion controversy, and the majority of the Aldermen ultimately declared in favour of this policy. Jeffreys found that he could no longer serve both the City and the Court, so he determined to throw off the mask and join wholeheartedly with the Court party. He realized, of course, that this would mean added friction with the Court of Aldermen, and there would most certainly be a struggle to oust him from the Recordership. Meanwhile a new star had appeared in the political firmament in the person of that handsome but weak bastard of the King, the Duke of Monmouth. Shaftesbury and the country party had openly looked to him as the Duke of York's rival in the succession, and to further their aims spread the famous rumour of the existence of a black box which was supposed to contain proofs of Monmouth's legitimacy.¹

Jeffreys kept careful watch on the progress of this new portent, and a bold allusion which he made to it about this time is said to have earned him the increased confidence of the King. Some persons had printed a Psalter which they called *The King's Psalter*. In so doing they infringed the copyright of the Stationers' Company, which promptly haled the literary pirates before the King and Privy Council. The company engaged Jeffreys to argue their case. This Jeffreys did in characteristic language. Referring to the pirates, he said, particularly addressing his Majesty, "They have teemed with a spurious brat, which, being clandestinely midwived into the world, the better to cover their imposture they lay it at your Majesty's door."

The King took this impudent reference in good spirits, and, turning to one of the Lords of the Council, exclaimed, "This is a bold fellow, I'll warrant him." Nevertheless, the Stationers' Company got a decree in their favour.²

In August the King caught a chill after playing a game of tennis, and suddenly fell ill. For some days his life was despaired of. The Royalists at that moment were a disjointed and leaderless party. They were terrified lest the King should die and his death plunge the country into a civil war which would result in a terror more awful than that of the Popish Plot, and mean the election of Monmouth and his faction and the

¹ *Hatton Correspondence* (1878), i, 225; L. von Ranke, *History of England* (1875), iv, 92.

² Woolrych, pp. 40-41.

extinction of the Royalists, both physical and political, at the hands of the all-powerful Shaftesbury. The Duke of York was secretly summoned back from Brussels and urged to come before it should be too late. However, his Majesty unexpectedly recovered, and when his brother arrived at Windsor at the beginning of September to find Charles returning to his accustomed diet of mutton and partridges, and declaring his intention of going to Newmarket, the whole country breathed a sigh of relief, for it was realized that the monarch's providential recovery had saved his subjects from a veritable reign of terror.

Congratulations began to pour into Windsor, and among those who came to pay their respects to the royal invalid were the Lord Mayor, Aldermen, and other officials of the City of London, including the Recorder. Throughout the interview James was present at his brother's side, but the Aldermen, now ardent for the policy of Exclusion, took no notice of the Duke of York beyond formally kissing his hand. Jeffreys, who was thoroughly annoyed, tried to cover up the blunder by proposing that the deputation should wait upon his Royal Highness. This the Mayor and Aldermen refused to do, excepting only Jeffreys' father-in-law, Sir Thomas Bludworth, and one or two others. This select band accordingly remained behind after their fellows had withdrawn, and had an audience of the Duke.¹ The fact that his Solicitor-General was responsible for this act of politeness was not lost upon James, and rumours soon got about that the Recorder was marked out for further legal preferment. Nor did the other Aldermen forget it.

The General Election, which took place in October, returned a House of Commons scarcely less Whig than its predecessor. Charles had shown that he had recovered sufficiently to act with some vigour. He announced his intention of proroguing Parliament, and Shaftesbury, who had urged him to meet it, was dismissed from his office of President of the Council. Furthermore, the King ordered both his son Monmouth and his brother James to leave the country in the hope of assuaging the ardour of the rival factions who inclined to these figures. Before James left he saw Jeffreys again. The occasion was a

¹ Woolrych, pp. 76-77; Hist. MSS. Comm., Report VII, *Verney Papers*, p. 475; *C.S.P. (Dom.)*, 1675, p. 244.

dinner given him by the Artillery Company in the City, preceded by a Protestant service, which the Duke did not attend, but after which the Mayor, Aldermen, and Recorder "walked all in scarlet gowns from Bow Church, where they heard a sermon." James made a tactful speech, in which he proposed the toast of the welfare of the City, but the crowd, which was quick to notice his coach, shouted "No Popery!" Once more the Recorder bade the Duke farewell, and it was again strongly rumoured that Jeffreys would get some important office.¹ The Attorney-Generalship, then vacant, was mentioned, but he was destined to be disappointed, for the post went to Sir Creswell Levinz, an able lawyer who had led for the Crown in several of the Popish Plot trials.

The King was as good as his word and prorogued the newly elected Parliament. His action roused Shaftesbury and his friends to renewed fury, and they celebrated the anniversary of Queen Elizabeth's accession in November by a monster Pope-burning procession through the City which seemed to presage a bloody revolution. Shortly afterwards Monmouth reappeared in Whitehall, and on being ordered off again by his father he retired to the City, where he joined Shaftesbury in getting up petitions to the King for the sitting of Parliament. These petitions, which spread from London to the country, met with considerable public support throughout the realm, and were a source of constant irritation to the King, particularly since their authors made scandalous insinuations against his Majesty, "plainly declaring that without the Parliament's sitting Popery would come in, the people be made slaves if not hanged at their own doors; the French power was to do it." To crown all, the Lord Mayor of London and Aldermen presented a petition, and ordered copies to be printed and posted throughout the City. In consequence they were summoned before the Privy Council to answer for their conduct. They duly appeared, bringing with them the Recorder, to whom had been assigned the uncongenial rôle of spokesman. The Lord Mayor, Sir Robert Clayton, who was by now a zealous supporter of Shaftesbury, is stated to have first

answered for the magistracy of the City, that they knew of no course they might by law take to suppress this inconvenience, for

¹ Hist. MSS. Comm., Report VII, *Verney Papers*, p. 476.

the people took it for a right in them to petition to his Majesty upon any grievance they were sensible of, and they acted upon that principle only and were very earnest in their adherence to it.

Jeffreys, who had by this time burned his boats in the City, took a very different line. He moved that the King be pleased by Order in Council to issue a Royal Proclamation whereby "his Majesty should prohibit the framing and presenting any such Petitions, and command all the Magistrates of the Peace to punish all persons acting to the contrary." This, he said, would oblige all mayors and justices "to be diligent and active in their stations to punish; and men, being fearful of the punishment, would forbear to offend." According to Roger North, the Recorder's motion was considered "somewhat gross," and his brother, Francis North, who was at the Council meeting, suggested that the proposed Proclamation should be so modified as not to prohibit petitioning altogether, but to warn the public of the danger its members were running in subscribing to such petitions and to punish those who petitioned "in a seditious and tumultuous manner." This was accordingly done, though Mr Attorney Levinz, who had to draw up the Proclamation, had no relish for such a difficult and embarrassing task, and he did not hesitate to say so.¹

Shaftesbury and his followers continued, in no wise daunted, to carry on their petitioning campaign. In this they had the support of a number of printers and booksellers. One of these, Benjamin Harris, published a pamphlet entitled *An Appeal from the Country to the City for the Preservation of His Majesty's Person, Liberty, Prosperity, and the Protestant Religion*. In this work the writer complained of the continued prorogation of Parliament, which he attributed to the Popish Plot, and hinted that the King countenanced the plot with that object in view; he further extolled the merits of the Duke of Monmouth in preference to those of his Papist uncle James. Harris was duly prosecuted for libel at the Guildhall in February 1680, and Jeffreys, who led the case for the Crown against him, drew a lurid picture of Shaftesbury's agitators congregating in the prisoner's shop and regarding anyone as no Protestant who did not "rail against the Church and Government."²

Jeffreys opened the case with a characteristic piece of humour.

¹ *Examen*, pp. 541-546.

² Howell, *State Trials*, vi, 926-931.

One of his witnesses, a printer's man, was called to prove that the prisoner took steps to hasten the printing. He agreed that he was given sixpence, although whether it was for that purpose he could not say. Jeffreys then asked him whether he was on the work at night.

"Yes," said the printer's man, "I was upon it in the night."

"Ay," Jeffreys broke in, "it was a deed of darkness, and so fit for night work."

Harris had boasted that thousands would stand by him at his trial, and some of them at least thronged the court and now and then let out a cheer. But he had no defence in law, and all his counsel could do was to call a neighbour to show that he was "a fair-conditioned, quiet, peaceable man."

"A bookseller that causes a factious book to be printed," retorted Jeffreys, "or reprinted, if it were printed before, is a factious fellow."

"You say right," observed Chief Justice Scroggs, who was trying the case.

However, the jury showed a marked unwillingness at first to convict, for they brought in a verdict of "guilty of selling the book" only. The Chief Justice thereupon told the foreman that they must find a plain guilty or not guilty. Jeffreys interposed with the suggestion that they should give their verdict by poll, but they shouted out they were now agreed and that they found the prisoner guilty. He was fined £500 and ordered to stand in the pillory for an hour.¹ A whipping would have been ordered for this sentence had not one of the other judges (Pemberton) intervened on the prisoner's behalf.

Jeffreys prosecuted in a similar trial at the Guildhall two days later. The accused, an Anabaptist preacher and bookseller named Francis Smith, was charged with publishing a book entitled *Observations upon the Late Trial of Sir George Wakeman*, and said to be by a certain "Tom Ticklefoot, late Clerk to Justice Clodpate"—"a very abusive thing," as Jeffreys described it in his opening, "but persons now begin to grow wonderful witty in the beginning of their books in hopes to ensnare people to read them and to prevail upon them so far to make them believe there is somewhat extraordinary by the

¹ When Harris was in the pillory "his party hollowed and whooped and would permit nothing to be thrown at him" (Luttrell, i, 34).

title." "Justice Clodpate" was, of course, none other than Lord Chief Justice Scroggs, who ever since Wakeman's acquittal had been abused up and down the country. When he next went on circuit dead cats had been flung into his coach, and his colleagues on the bench, Pemberton and Atkyns, openly reprobated his treatment of Oates. As for Oates, he charged the unfortunate Chief Justice before the Privy Council with swearing and drinking and other high misdemeanours. Almost his sole sympathizer was the King, who sent for him from his sickbed and told him he would stand by him. "They have used me worse," said Charles, "and I am resolved we will stand and fall together."¹

The court was again crowded with Shaftesbury's supporters, and Jeffreys seemed to go out of his way to infuriate them. "I would not take up so much of your lordship's time," he observed, when he had described the enormity of the libel, "but that I see this is a matter of great expectation; and I know that every word is taken in shorthand to be commented upon as persons' humour shall steer them. I do think, as being the mouth of the City of London, it is my duty to speak this much, that I hope—nay, I may dare confidently affirm—that the generality of the City of London, all good men and men of abilities, are for the King and the Government as it is now established by law."

These words were greeted with a general hum of disapproval from the onlookers in court. Nor was the Recorder's arrogant description of himself as the "mouth of the City" soon forgotten.

Smith's counsel admitted the infamy of the libel, but demurred at first on the question of his client's guilt.

"Sir, do you admit the record?" asked Jeffreys bluntly.

"Sir," answered defending counsel, "if you will give me leave you will hear what we will admit."

"Come, come, sir," said Jeffreys; "if you do not admit the record we will have none of your anticipations."

"What call you your speech but anticipation?" retorted the accused's counsel. He then went on to plead that his client was in poor health—in fact, a dying man—and that he was willing to make any reparation he could, but counsel had to add that the libel had not been printed by the order of the accused.

¹ *Hatton Correspondence*, i, 192.

The bench strongly advised Smith to plead guilty and throw himself on the mercy of the court. "That is your best way," echoed Jeffreys. "I am for a sinner's repentance with all my heart."

As a matter of fact, Smith, by reason of his alleged illness, was not in court, and his wife took the verdict on her husband's behalf. He was let off with a small fine.

But Smith was not so ill as his wife and counsel represented. Jeffreys was to hear more of him.

III

Although he had recently missed becoming a Law Officer, Jeffreys was plainly marked out for further promotion. One office upon which he particularly cast his eyes was the Chief Justiceship of Chester. As a county palatine Chester had its own court and judges, whose jurisdiction extended to the greater part of North Wales. Jeffreys, whose grandfather, it will be remembered, had been a judge of this court, desired the post for obvious reasons of family and territorial prestige. The court only sat two or three times a year, and it did not involve a great deal of work.¹

The difficulty in the gratification of Jeffreys' desire was that the post was already filled by an old Cavalier, Sir Job Charlton, who, Roger North tells us, "had a considerable estate towards Wales and desired to die in that employment." However, the Duchess of Portsmouth pleaded eloquently with the King for her favourite, and in the end Jeffreys was gazetted Chief Justice of Chester (April 30, 1680). Charlton was compensated by being made a puisne judge in the Court of Common Pleas, but he surrendered his former post with considerable reluctance. "Sir Job laid his hand heavily upon his heart," wrote Roger North,

and desired only that he might speak to the King and receive his pleasure from his own mouth; but was diverted as a thing determined. But once he went to Whitehall and placed himself where the King returning from his walk in St James's Park must pass; and there he sat him down like hermit poor. When the

¹ This post carried a yearly salary of £500 (*Calendar of Treasury Books*, 1679-80, p. 606).

King came in and saw him at a distance sitting where he was to pass, concluded he intended to speak with him, which he could not by any means bear; he therefore turned short off and went another way.¹

Not long before this Jeffreys had been admitted to the superior degree of Serjeant-at-law, and he consequently left the Inner Temple to join the select company of Serjeants' Inn, in Fleet Street. The Serjeants were an ancient order. On being admitted members tradition demanded that the new Serjeants should present the King, the Lord Chancellor, and others with rings bearing mottoes of their own choosing. Jeffreys, with an eye to further preferment at his Majesty's hands, chose the words "A Deo rex, a rege lex" ("The King from God, the law from the King"). The Serjeants were also distinguished by a round black patch, or coif, which they wore on their wigs, and they enjoyed the exclusive right of practising in the Court of Common Pleas. Furthermore, the judges of the three common-law courts of King's Bench, Exchequer, and Common Pleas were drawn exclusively from the ranks of the Serjeants.² From among them, too, the sovereign specially appointed the King's Serjeants, who acted as public prosecutors in State trials, taking precedence of the Attorney-General. Jeffreys' appointment of Chief Justice of Chester in this case carried with it the patent of King's Serjeant, which was duly gazetted.³ On May 12, 1680, Jeffreys and a number of other barristers similarly honoured appeared in the Court of Chancery, in Lincoln's Inn, and took the requisite oaths. Three days later, according to the chronicler Narcissus Luttrell,

they performed the ceremony of walking in their coifs from Westminster to Gray's Inn (the Lord Chief Justice being of that Inn) with a great train of gentlemen of the long robe out of all the societies of the law, and afterwards entertained the nobility and judges very splendidly at Serjeants' Inn Hall in Fleet Street.⁴

These honours did not in any way diminish Jeffreys' customary air of arrogance, nor did they add to his general

¹ *Lives*, i, 276-277; Luttrell, i, 39.

² This remained the law in England until the coming into operation of the Judicature Act in 1876. The history of the Serjeants-at-law and their order is recorded in Alexander Pulling's *The Order of the Coif*.

³ The fees paid by Jeffreys on the patent amounted to £20 13s. 4d. The receipt, now in the possession of Miss M. Melville Balfour, is signed by Thomas Milton, the Deputy-Clerk in Chancery, who was a nephew of the poet.

⁴ i, 43-44; Woolrych, p. 60.

popularity. As a contemporary observer remarked of him, "He hath in great perfection the three chief qualifications of a lawyer—boldness, boldness, and boldness."¹ Such qualifications earned Jeffreys a severe rebuke from the bench during a civil action tried by Baron Weston at the summer assizes that year at Kingston. Jeffreys began to browbeat his opponents' witnesses, and the judge bade him hold his tongue. Jeffreys apparently retorted by telling the judge that he would not be treated as an ordinary counsel and "curbed in the management of his brief."

"Ha!" exclaimed Baron Weston, "since the King has thrust his favours upon you in making you Chief Justice of Chester you think to run down everybody. If you find yourself aggrieved make your complaint. There's nobody cares for it."

Furious at such a public humiliation, Jeffreys retorted that he was more accustomed to settling the complaints of others than making them himself. But the judge sternly told him to be silent and sit down. He had no choice but to obey, and as he resumed his seat he almost wept with anger.²

His conduct when he rode his first circuit as Chief Justice of Chester later in the same year was scarcely less creditable. In fact, it was denounced in no uncertain language shortly afterwards in the House of Commons by Henry Booth, one of the members for Cheshire, later Lord Delamere. The Chief Justice, declared Booth, "behaved himself more like a jack-pudding than with that gravity which beseems a judge." Mr Booth went on to give examples of his objectionable conduct:

"He was mighty witty upon the prisoners at the bar. He was very full of his jokes upon people that came to give evidence, not suffering them to declare what they had to say in their own way and method, but would interrupt them because they behaved themselves with more gravity than he; and in truth, the people were strangely perplexed when they were to give in their evidence."

Mr Booth continued his complaint:

"But I do not insist upon this, nor upon the late hours he kept up and down our city. It's said he was every night drinking till

¹ Charles Hatton (*Hatton Correspondence*, i, 199).

² Woolrych, pp. 65-66. Cf. John Verney to Sir Ralph Verney (August 1, 1680): "Sir George Jeffreys behaved very ill at Kingston Assizes, where passed some words between him and Judge Weston on the bench" (Hist. MSS. Comm., Report VII, *Verney Papers*, p. 479).

two o'clock or beyond that time, and that he went to his chamber drunk—but this I have only by common fame, for I was not in his company: I bless God I am not a man of his principles or behaviour—in the mornings he appeared with the symptoms of a man that overnight had taken a large cup. But that which I have to say is the complaint of every man, especially of them who had any lawsuits. Our Chief Justice has a very arbitrary power in appointing the assize when he pleases; and this man has strained it to the highest point, for whereas we were accustomed to have two assizes—the first about April or May, the latter about September—it was this year the middle (as I remember) of August before we had any assize; and then he dispatched business so well that he left half the cases untried, and to help the matter, has resolved that we shall have no more assizes this year.”¹

At the conclusion of his first assize Jeffreys is supposed to have paid a visit to Acton, where his father, then over seventy, was still living. The new Chief Justice is said to have come with such a train that

the cider-barrels at Acton ran very fast, and the larder was soon exhausted; whereupon the old gentleman in a great fret charged his son with a design to ruin him by bringing the whole country at his heels, and warned him against again attempting the same prodigality.²

IV

Encouraged by the acquittal of the Queen's physician, Sir George Wakeman, the Catholics took heart and tried to turn the tables on their enemies and assassins. With the help of a notorious midwife, Mrs Elizabeth Cellier, “who had a great share of wit,” but “was abandoned to lewdness” (as Bishop Burnet described her), the Catholic followers of the Duke of York found a willing instrument in Thomas Dangerfield, a convicted felon in Newgate. They got him out of prison, gave him money, and set him to spy on the Shaftesbury faction. He soon produced a Presbyterian conspiracy, but shortly afterwards went over to the ranks of their enemies, to whom he denounced the sham plot, telling the authorities that the papers on which it was to have been founded were concealed

¹ Chandler, *Debates*, ii, 163; Woolrych, pp. 66–68. Jeffreys' saddler's bill at this time shows that he rode his first circuit in considerable state. It amounts to £20 16s. 4d., and includes, *inter alia*, “a Judge's ffurniture (vizt) Bridle Breast plate & Crupper with Trappings with large graven Buckles barrs & Studs & pendants,” “Bitt & Coloured Bosses,” and “a Sumpter Saddle with all ffurniture to it.”

² Campbell, iii, 520.

in a meal-tub in Mrs Cellier's house. The result of the so-called Meal-tub Plot was that Mrs Cellier was arrested on a charge of high treason. She was brought to trial in the Court of King's Bench on June 11, 1680, and Serjeant Jeffreys helped to present the case against her.¹

It was a decidedly flimsy case, and the Crown lawyers were rather ashamed of their witnesses. The first was a well-known astrologer named Gadbury, who had been suspected of participation in the Popish Plot, but had been released on consenting to help the authorities in exposing the conspiracy. He had been several times to Mrs Cellier's house, but he astonished the court by testifying in her favour. The most he would admit was that she asked him to tell her from the King's horoscope how long he would live. Gadbury refused to satisfy her curiosity, knowing that to cast such a horoscope was treasonable. She then asked him some questions about an individual whom she did not name, but the time and date of whose birth she told the astrologer. This individual turned out to be Dangerfield.

Dangerfield himself was called, but the prisoner immediately took exception to him as a witness.

"If I can prove he was whipped and transported, pilloried and perjured," she said, "he is no witness."

"If you can show any record whereby he is convicted of anything that can by law take away his testimony," replied Chief Justice Scroggs, "do it."

A witness came forward to prove that Dangerfield had been convicted of burglary at the Old Bailey, when he pleaded benefit of clergy and was burned in the hand. Mrs Cellier then went on to say she could prove him guilty of forgery. The Crown lawyers were beginning to squirm in their places. But Jeffreys spoke up. "That which she calls forgery is not that which the law calls forgery," he said; "it is counterfeiting guineas." Still, it was bad enough.

Dangerfield had pleaded the King's pardon, but Mrs Cellier retorted that she had a copy of it in court, and it did not extend to some of the crimes of which he stood convicted. So he was sent to fetch the original.

In an effort to make some headway the prosecution tried to

¹ Howell, *State Trials*, vii, 1043; Burnet, *History of His Own Times* (1823), ii, 234.

prove that Mrs Cellier had been intimate with Dangerfield. Her maid, Susan Edwards, was called, and said they were often together in the mistress's room. "Her husband was gone to church one morning," said Susan, evidently anxious to supply the court with details of her mistress's *amours*, "and he was with her in her chamber." But the judge interrupted her. "I can't see why you should prove this matter too far," said Scroggs.

Dangerfield's record was read out, and, though Jeffreys protested that it could not refer to the same person, the facts were plain. "I wonder at your impudence," said Scroggs, addressing Dangerfield, "that you dare look a court of justice in the face after having been made so monstrous a villain." Mrs Cellier was acquitted, while Dangerfield was taken into custody on the technical flaw in his pardon to which she had drawn attention.

Next to be tried at the King's Bench for complicity in the Meal-tub Plot was an Irish Catholic peer, Roger Palmer, Earl of Castlemaine.¹ His wife was the King's ex-mistress, Barbara Villiers, Duchess of Cleveland, but they had been separated for nearly twenty years. During this period Castlemaine had travelled a good deal abroad, and as he was known to be in touch with Catholics on the Continent he was a tempting prey for the despicable Oates, who was hoping to rehabilitate himself with the authorities by securing an important conviction. Castlemaine defended himself as skilfully as Wakeman had done, and he attacked the two material Crown witnesses, Oates and Dangerfield, with surprising vigour. It was not long before Oates begged the protection of the court, but even Jeffreys, among the Crown counsel, was inclined to give the prisoner every latitude. "Indeed," he said, "it is reasonable that my Lord Castlemaine should ask him some questions, and that Mr Oates should give him an account."

When Dangerfield was called the prisoner objected to his record, and had no difficulty in proving him a convicted felon. Jeffreys thereupon tried to argue that his pardon (which had been amended to remove the technical flaw of which Mrs Cellier had complained) had removed his guilt, and thus let him in as a good witness. "The reason my Lord Hobart gives——" he said, attempting to quote authority. "Nay, give *your* reason," broke in the Chief Justice. "Felony is a fault against the King,"

¹ Howell, *State Trials*, vii, 1067.

Jeffreys went on unperturbed; "and when the King pardons it ceases." Scroggs overruled Jeffreys, but consented to take the opinion of his brother judges. He in turn was overruled by them, and Dangerfield was eventually allowed to give evidence.

But Scroggs held the last card. He told the jury in his summing up that one witness was not sufficient to convict in a charge of treason, and if they disbelieved the evidence of Dangerfield, who had himself been convicted of "six great enormous crimes" (which, in fact, he invited them to do), then they must acquit the prisoner. Under this stimulus the jury returned a verdict of not guilty.

The Shaftesbury faction continued to taunt the Government with being half-hearted in the suppression of the plot, and the Government retorted by charging the republican pamphleteers with publishing libels. At the beginning of July 1680, shortly after Castlemaine's acquittal, a bookseller named Henry Care came up at the Guildhall, accused of publishing a defamatory book entitled *The Weekly Pacquet of Advice from Rome; or, The History of Popery*.¹ This work described in satirical language the merits of "an incomparable medicament called 'Th Wonder Working Plaister,' truly Catholic in operation, somewhat akin to the Jesuits' powder, but more effectual," which was said to "make justice deaf as well as blind, takes spots out of deepest treason more cleverly than Castile soap does common stains, . . . helps poisons and those that use them, . . . is a mighty cordial for a declining cause," and "stifles a plot as certainly as the itch is destroyed by butter and brimstone."

Jeffreys, who led for the Crown, began by saying that he proposed to indicate the nature of the libel complained of, not only for the jury's satisfaction, but for the many onlookers in court who were obviously sympathetic towards the prisoner—"this great auditory," as he called them, "some whereof I know come to pick advantage and to know whether or no rascals may have liberty to print what they please." Having done this, he then put forward the somewhat arbitrary doctrine that no individual had the right to discuss the affairs of the King's Government in print without having first obtained the permission of the King or his authorized agents. "But such is the age that we live in," he went on, "that a man that hath

¹ Howell, *State Trials*, vii, 1111.

wit enough to libel any man in the Government thinks he hath licence enough to expose that man to public knowledge also. And they do it under specious pretences, because they think that any man may be exposed to the public censure that they can either call a Papist or but Popishly affected, and that man is either the one or the other that is not agreeable to every rascally humour that some people affect." And, turning to Chief Justice Scroggs on the bench, Jeffreys added, "I acknowledge, my lord, that any man that will in a legal manner endeavour to suppress Popery ought to be encouraged in his endeavour to the utmost. But if in case any man should be transported with zeal because he is of a party and, under pretence of endeavouring to suppress Popery, should support Popery, that man ought to be detected. The author of this *Pacquet of Advice from Rome*—or the publisher of it, Mr Care, that is now the defendant—he thinks he can scratch the itch of the age, and that he may libel any man concerned in the Government if he can but call him a Papist or Popishly affected, let a man be never so honest, let a man be never so much for the support of that religion that every honest man ought to support—that is, the Protestant religion as it is established by law—without going to Rome or Amsterdam for assistance."

Proof of publication in this case was clear, though Jeffreys had great difficulty in bringing it home to the prisoner, since the Crown witnesses, terrified of the threatening attitude of the crowd in court, gave their evidence haltingly. Some members of the crowd began to hum, as they had done in the trial of Francis Smith, and Jeffreys went for them in his concluding speech. "I say, whoever it is, who is bound by his oath to go according to the evidence, shall acquit this man, he must be a man of humming conscience indeed." The jury retired for an hour, and then brought in the prisoner guilty. "They have done like honest men," said Jeffreys.

V

A few days later the summer sessions began at the Old Bailey, where it fell to Jeffreys as Recorder to preside at one of the last of the Plot trials.¹ This was a curious case of attempted murder,

¹ Howell, *State Trials*, vii, 1129.

and it is something in the Judge's favour that it has been described by the leading historian of our criminal law as one of the two trials connected with the Popish Plot which were "conducted with conspicuous fairness and decency."¹ The prisoner was a Catholic gentleman, one John Giles, and he was accused of making a murderous attack on the person of a certain Monmouthshire magistrate named Arnold in circumstances somewhat resembling the case of Sir Edmund Godfrey, with the exception that this alleged attempt did not succeed.

Arnold, according to his story, had come up to town in answer to a summons to attend the Privy Council. After dining with a party of friends in a tavern in Fleet Street he set out to call on a lawyer who lived in Bell Yard. He noticed two men in long cloaks following him, but did not pay any particular attention to them at first. On entering Bell Yard some one chanced to come out with a candle, and by its light (so he said) he recognized one of the two men to be Giles. Almost immediately a cloak was thrown over his head, and before he could use his sword his assailants set upon him and slashed him with their weapons in the face, arm, side, and stomach. Jeffreys tested this evidence carefully, asking Arnold if he could swear positively that the prisoner was one of the men who attacked him and questioning him carefully about the light showing and the clothes the prisoner wore until Arnold protested that he could not give an account of every particular. "It is not to be expected that a man in your circumstances," the Recorder explained to him, "should be extraordinary precise in circumstances. Therefore it is asked you that, according to the best of your apprehension, you might acquaint the court with those circumstances that may be remembered by the jury, that they may see there be no injury done to the prisoner at the bar, but that right be done on both sides and that in every circumstance."

The only direct witness of the crime was Arnold, but a number of other witnesses corroborated his evidence in certain particulars. It transpired that the next day Giles left London in a great hurry, and a witness who saw him and spoke to

¹ Sir James Stephen, *History of the Criminal Law of England*, i, 396. The other trial to which Stephen alludes was that of Lord Stafford in the House of Lords later in the same year.

him shortly afterwards at Usk, in Monmouthshire, elicited the information that "he made haste for fear of being taken and stopped for Mr Arnold's business." A second witness swore that on the day before the crime Giles asked him where he could buy a new rapier; and another witness, who was drinking with Giles on the following day, when they heard the news of the attack on Arnold, swore that Giles said, "God damn him, he had armour on"—words similar to those which Arnold had said one of his assailants had used at the time of the attack.

The prisoner's first line of defence was that the wounds were really self-inflicted, and that, with the assistance of his friends, Arnold had mutilated himself to enlist popular sympathy as he was zealous in his persecution of the Monmouthshire Catholics and saw himself in the light of a second Sir Edmund Godfrey. The prosecution laughed this theory to scorn. "This is likely to be a fine contrivance that he should do it himself," said one of the Crown counsel, "as likely as that Sir Edmund Berry Godfrey put his own sword through his own body after his neck was broke." A great shout of approval greeted these words. But Jeffreys interposed to say that he believed it possible, though in the circumstances he did not consider it likely. A little later several bystanders in court broke into humming and hissing, and the Recorder promptly reproved them. "It does not become the decency and gravity of a court of justice," he remarked, "to be humming and hissing when facts are trying of this great concernment."

Giles then tried to prove an alibi, but unfortunately his witnesses were not very satisfactory. His story was that he had been drinking with friends that evening and went to bed at his inn between ten and eleven. One of his friends, named Howel, who went on drinking brandy in another room, said he heard the prisoner say good night about eleven. "After two pints of brandy," observed the Recorder of this witness, "I wonder how he can remember anything."

Then Elizabeth Crook, a maid at the inn, testified that she made the prisoner's bed about ten, and that he retired shortly after that. Now, one of the Crown witnesses, named Richmond, who was a fellow-guest at the inn, had already stated in evidence that he came into the room when the maid was making the bed, and there had some dalliance with her.

RECORDER. I ask you—do you remember Richmond came in to you and asked you anything about making the bed? Do you remember he was in the chamber?

WITNESS. In whose chamber?

RECORDER. Did Richmond come in when you were making the bed?

WITNESS. He was not there as I knew of.

RICHMOND (*to witness*). Was I not in the chamber when you made the bed?

WITNESS. No, I don't remember you.

RICHMOND (*to Recorder*). My lord, when this maid came to make the bed I went into the room after her and had some discourse with her. We leaned together in the window, and I told her I was in love with her. I told her if she liked it I would marry her the next morning. I did it to make merry—for, indeed, I am a married man.

RECORDER. What time of night was it?

RICHMOND. About twelve o'clock.

RECORDER (*to witness*). If you forget your other sweethearts, can you remember this? Do you remember now he was there?

WITNESS. I remember he was there.

PRISONER (*to Arnold, who had burst out laughing*). Mr Arnold, pray do not laugh at my witnesses and make May games at them. It is not the part of a gentleman.

RICHMOND. And she told me that he should lie by himself, though the house was very full.

RECORDER (*to witness*). Do you remember any such discourse?

WITNESS. I do remember that Mr Richmond did come in.

CROWN COUNSEL (*to witness*). What time of night was it that he was making love to you?

WITNESS. I think about ten o'clock.

CROWN COUNSEL. Time passed merrily away with you, then.

RICHMOND. It was twelve o'clock.

WITNESS. Why do you say so? Our house was all quiet presently after eleven.

RICHMOND. Why will you say so? Were not we singing and roaring together?

RECORDER. Come, do not be angry. You were not angry when you were making love together.

RICHMOND. I am not angry indeed, sir.

It is not necessary to follow Jeffreys throughout his summing up, which was thorough and perfectly fair. As he told the jury, "You shall have a faithful account of what has been said by every witness, both for and against him; for right is to be done." A faithful account the jury had, and when it is remembered that judges in those days took few or no notes on

the bench it must be admitted that Jeffreys' recapitulation of the evidence in this trial was an extraordinary feat of memory, for he failed to notice nothing that was in any sense material to the main issue. He took care, for instance, to discuss the defence's theory that the wounds were self-inflicted, though, as he had remarked earlier in the trial, "it is against nature for any man to believe that any person should put himself to so much trouble."

After an absence of half an hour the jury brought in a verdict of guilty. The sentence was the pillory and a fine of £500, with imprisonment in default of payment.

The remarkable fact about this case is that Giles was really innocent, and the higher authorities had every reason to know it. Sir Leoline Jenkins, one of the Secretaries of State, sent an agent to investigate on the spot, and he reported that there was insufficient light from any of the neighbouring windows for Arnold to have recognized anyone, and that his alleged assailants must have been seen or heard leaving the scene—if, indeed, they had ever been there. The matter was subsequently hushed up, since the Government did not wish to incur the charge of having Popish sympathies. There is no evidence of any kind to show that Jeffreys knew anything of this.¹

But there was another case at the same sessions in which Jeffreys was accused, with more apparent justice, of acting improperly. Unfortunately the facts are veiled in obscurity, so that it is not possible to ascertain the exact month. A Catholic magistrate named Doughty was convicted of murdering a hackney coachman, one Capps, by running him through with his rapier. No report of the trial has survived, but from a petition which Doughty subsequently sent the King it appears that there was a miscarriage of justice, since the wounds were in fact slight and Capps soon went about his business again. His subsequent death, which was supposed by his friends to be the result of the attack, was really due to a malignant fever. These facts seem to have been generally known, and Jeffreys was accused of influencing the jury towards conviction in order to oblige the Duchess of Portsmouth, who had some grudge against Doughty. "Jeffreys is extremely cried out against about Justice Doughty's being convicted of

¹ Sir John Pollock, Bart., *The Popish Plot* (1903), pp. 395-399.

murder," wrote a member of the Verney family from London at the time. "Some say he and Mrs Wall, the Duchess of Portsmouth's woman, lay their heads together to have it so; others he and Stroud, the bailiff of Westminster, agreed it. Either was very bad if true." ¹

The King referred Doughty's petition to the Lord Mayor, Sir Robert Clayton, and the Recorder. They recommended the petition to the King's mercy, and Doughty was pardoned and eventually released. Whatever be the truth of the matter, the rumour implicating Jeffreys served to swell his already growing unpopularity in the City.

The opening of the September sessions at the Old Bailey found "the Popish midwife," Mrs Cellier, again up for trial, this time on a charge of libel.² She had published a vindication of her conduct in the matter of the Meal-tub Plot, and in an incidental description of her charitable visits to Newgate had accused the prison authorities of torturing prisoners in their keeping. In particular she referred to a visit which she had paid in January 1678, when she and some other women with her "all heard terrible groans and squeaks which came out of the dungeon called the Condemned Hole." The turnkey told them it was a woman in labour, and on their volunteering to go in and help her the turnkey drove them out of the prison. They then listened in the street, and "soon found it was the voice of a strong man in torment, and heard as we thought between his groans the winding up of some engine." Catching hold of an officer who was coming out of Newgate, Mrs Cellier asked him what they were doing in the prison. "I dare not tell you, mistress," replied the officer. "It is a man upon the rack," said Mrs Cellier, "I'll lay my life on it." "It is something like it," rejoined the officer. "Is it Prance?" she asked, but the officer refused to tell her.

It will be remembered that Prance was treated with great rigour in Newgate about the time of Mrs Cellier's visit to induce him to give evidence against Berry, Hill, and Green at their trial for murdering Sir Edmund Godfrey. Although he was almost certainly not put on the rack, Mrs Cellier might quite easily have persuaded the jury to acquit her, since Prance,

¹ Hist. MSS. Comm., Report VII, *Verney Papers*, p. 479; Irving, p. 110.

² Howell, *State Trials*, vii, 1183.

who gave evidence, swore he had not always been well treated in prison. But Mrs Cellier antagonized the jury and every one else in court, including her own counsel, who told her plainly when she appealed to him to speak for her just before the judge's summing up that he had nothing to say for her, and "If you had said less for yourself it had been better." In due course she was convicted.

The case was tried by Baron Weston, who had a few weeks previously reprimanded Jeffreys in open court at Kingston Assizes. It seems that Jeffreys, still smarting under this rebuke, declined to sit on the bench with Weston, since he is not reported as having uttered a single word throughout the trial. In fact, he only appears to have been present to perform his duty as Recorder when the prisoner came up for sentence two days later. He then simply read out the sentence, without delivering the homily on the nature of the offence which was his habit—a fine of £1000, to stand in the pillory three times, and while there her books to be burned by the common hangman.

It was the last sentence of any importance which Jeffreys was to pronounce as Recorder, for the following Old Bailey Sessions saw another in his place on the bench.

The Recorder's day of reckoning with the City could not be long postponed, for since he had taken part in framing the Royal Proclamation against "tumultuous petitions" Shaftesbury and his country party were determined to get even with Jeffreys. The Recorder, however, showed his contempt for them by being the first to give an effective counterblast to their campaign, for, so long at least as Parliament was prorogued, he knew himself to be safe. About a fortnight after his appointment as Chief Justice of Chester he presented an address to the King "from the loyal citizens of London, wherein they declared this way of petitioning to be the method of 1641 and intended to bring his Majesty to the block as his father was brought, all of which doings they abhorred." The result was, in the words of Roger North, "the train took and the frolic went all over England, so that there was scarce an assizes or considerable town that did not send up their Address of Abhorrence, as it was called."¹ The supporters of the Govern-

¹ *Examen*, p. 547.

ment then came to be known as Abhorrrers, as distinct from their opponents, who styled themselves Petitioners. But it was the abusive names by which each party described the other that were to stick. The Petitioners called their rivals Tories, after the outlawed Catholic bandits of the Irish bogs, while the Abhorrrers referred to their opponents as Whigs, after the disloyal Covenanters of the Scottish moors.

The first serious signs of approaching trouble for Jeffreys occurred in July at the Guildhall when the annual elections of City officers took place for the ensuing year. A rabid Whig, Sir Patience Ward, was chosen as the new Lord Mayor, while two more of Shaftesbury's nominees, Henry Cornish and Slingsby Bethel, became Sheriffs. The Sheriffs, whose duty it was to select the jury panels for London and Middlesex, made no secret of their intention of packing the juries, so as to secure acquittals when any members of their party were brought to trial. Furthermore, the outgoing Mayor, Sir Robert Clayton, declared his intention of presenting a petition from the Liverymen of the City to the King asking that Parliament might assemble and sit to take measures against the machinations of Rome. Jeffreys pointed out that the petition was couched in language which bordered on treason, but Clayton insisted on presenting it. The King was furious, but could do nothing except signify his displeasure by refusing to confer the customary knightships on the new Sheriffs. He had promised, too, that there would be no more prorogations, and that Parliament would meet in the autumn.

The two Sheriffs were as good as their word. Francis Smith, the Anabaptist whose conviction for libel earlier in the year will be remembered, came up again at the Guildhall on a similar charge in September. He had written another book, in which he stated that the City officers had lately become so extravagant in the matter of entertaining that a poor man could not qualify for their offices, and he went on to quote an old Act of Philip and Mary for retrenching their expenses which he accused the responsible authorities of refusing to put into operation. "Debauchery is come to that height," he wrote, "that the fifth part of the charge of a shrievalty is in wine, the growth of another country." Smith was accordingly indicted for libel, but the Grand Jury threw out the bill,

endorsing it on the back with the word "Ignoramus." The sessions were then adjourned, in accordance with custom, to the Old Bailey.¹

Jeffreys, who was on the bench at the Old Bailey, had the bill again presented to the Grand Jury. Again the Grand Jury threw it out. Whereupon the Recorder upbraided them for their conduct, and had the evidence for the prosecution repeated. "God bless me from such jurymen," he said, "I will see the face of every one of them, and let others see them too." He then ordered a space to be cleared in the middle of the court, so that he might put the bill to each man individually. "I will hear them repeat every man of them their own sense of this bill," he added. This was done, and every one of the seventeen Grand Jurors, on being asked by Jeffreys whether Francis Smith was guilty or not guilty of the bill against him, met the Recorder's terrifying gaze unflinchingly and answered, "Ignoramus."

The Recorder thereupon had Smith brought into court and informed him of what had happened, telling him that he was "an ingenious person" and his best course was to throw himself on the grace and favour of the court, since "the jury hath brought in a verdict contrary to plain evidence."

But Smith was not to be outwitted like this. "Sir," he replied, "my ingenuity hath sufficiently experienced the reward of your severity already formerly; and besides I know no law commands me to accuse myself, neither shall I. The jury have done like true Englishmen and worthy citizens, and blessed be God for such a just jury."

Smith was remanded to the next sessions and sent back to Newgate. However, as admission to bail could not be denied him, he was released on finding sureties, though he complained that the Recorder found them in a large sum. Smith then tried to obtain a copy of the indictment, and waited repeatedly at Jeffreys' house for this purpose, but without success. Finally, he made an application to Chief Justice Scroggs in Jeffreys' presence at the Old Bailey, and was told that he was legally entitled to have it, while the Recorder excused himself by saying that "his private house was not a court and therefore he was not to meddle with ordering any such thing there." When

¹ Howell, *State Trials*, vii, 937 *et seq.*

he eventually obtained a copy of the indictment, presumably drawn by Jeffreys, Smith found it consisted of seventeen closely written sheets in Latin.

Jeffreys now realized that he had gone too far, and on his own initiative the proceedings against Smith were allowed to drop. But it was too late to save his own position in the City. Parliament was at long last about to meet, and he knew that the day of reckoning with his enemies was at hand.

The second Whig Parliament opened on October 21, 1680, in a violent and revolutionary mood. The Commons began by choosing as their speaker William Williams, a Welsh barrister, who was Recorder of Chester and one of Jeffreys' particular enemies. On his warrant private Tory members were arrested throughout the country. The Lower House, accompanied by the Lord Mayor of London and Aldermen, carried up the Exclusion Bill "with a mighty shout" to the Lords, where, however, Halifax, who had deserted to the Tories, caused its rejection. In retaliation the Commons impeached Halifax, and also the Chief Justices Scroggs and North. They then turned on Jeffreys. The Liverymen of the City had already petitioned the Commons for his removal from the Recordship as a person "most obnoxious and insupportably burdensome" in his office, and the House duly appointed a committee to inquire into the charges against him.

On November 13 the committee presented their report recommending his removal, and the question was debated. Lord William Russell began with the observation that Jeffreys was plainly a criminal; Sir Patience Ward, the new Lord Mayor, pointed out the danger of allowing such a man to speak for the City; and another member, Thomas Pilkington, said he took the Recorder to be the common enemy of mankind, "and I hope you will use him accordingly." Henry Booth then made the remarks about his conduct as Chief Justice of Chester which have already been quoted.¹ "What sticks with me," said Sir Robert Clayton, the ex-Mayor and one of his friends, "is his officiousness at the council table." His cousin, Sir John Trevor, was the only voice raised in his defence. "He has been counsel for the King in the plot and behaved himself worthily," said Trevor; "and if he was too forward in

¹ See above, p. 99.

prosecuting that may make some atonement for his forwardness in other matters. His carriage in the matter of petitioning was an error of judgment. He is a gentleman that hath raised himself in his profession. There is nothing said that he hath done wrong to any person in estate or life."

But the House paid no heed to Trevor, and proceeded to approve the report of its committee, at the same time passing the following resolution and orders, which were duly recorded in the *Journals* of the House :

Resolved, That Sir George Jeffreys, Recorder of the City of London, by traducing and obstructing petitioning for the sitting of this Parliament, hath destroyed the right of the subject.

Ordered, That an humble address be made to his Majesty to remove Sir George Jeffreys out of all public offices.

Ordered, That the Members of this House that serve for the City of London do communicate the vote of this House relating to Sir George Jeffreys, together with their resolutions thereupon, to the Court of Aldermen for the said City.

Although it is not recorded in the *Journals*, Jeffreys is said to have been summoned to the Bar of the House at the same time and there obliged to submit to a humiliating reprimand from the Speaker.

To the address voted by the Commons the King returned the answer, "Le Roy s'avisera," the traditional method by which the monarch indicated disapproval of a Parliamentary measure, for he knew how useful the Recorder was in the City, and he did not wish to lose him, "because," as Roger North remarked, "he was of such an overruling genius and stern behaviour towards men whom he intended to awe as enabled him to be very influential among the citizens, and in other respects could not be so well employed." But Jeffreys saw clearly how the wind was blowing. The message from the House of Commons to the City about him conveyed the hint that unless the Recordership were vacated he would be impeached like Scroggs and North. There was nothing for it but to give in, and, rather than submit to the additional ignominy of removal and the possible risk of impeachment, he decided to place his resignation in the hands of the City authorities.

On December 2, 1680, the Court of Aldermen reported that "Sir George Jeffreys, Knight, Serjeant-at-law, Recorder of

this City, did freely surrender up unto the Court his place of Recorder, of which surrender the Court did accept and allow."

The King was not surprised when he heard the news. In fact, he was pleased to laugh and say that "Sir George Jeffreys was not Parliament-proof."¹

¹ Woolrych, p. 78; North, *Lives*, i, 275; North, *Examen*, pp. 550-551. Chief Justice North subsequently wrote of Jeffreys that "upon troubles in Parliament he would not stand his ground, but quitted his Recordership in fear and with great entreaty." According to a manuscript sold at Sotheby's in March 1929 he was ordered by the Court of Aldermen to surrender his office because "he hath betrayed the rights of the subject."

CROWN COUNSEL

JEFFREYS could congratulate himself that he had come off lightly in this hour of Whig victory. He had escaped impeachment at the hands of an angry Parliament; and, although he had been compelled to give up his Recordership, he had not been obliged to sever all connexion with the City. The King appointed him to a commission in the City of London Militia Regiment, and a little later he was gazetted to the Lieutenancy of the City: in each case well-known Whig sympathizers were turned out to make way for him. Meanwhile the Middlesex magistrates, anxious, it appears, to please the King, elected Sir George Jeffreys Chairman of the General Sessions of the Peace for their county. The Court of Aldermen even voted him pecuniary compensation for the "great sums of money" he was said to have disbursed "in fitting up his dwelling-house in Aldermanbury which he held of the City," and which he was now expected to vacate.¹ The City authorities further obliged him by making no attempt to evict him from this fine house. It seems that he did eventually acquire another residence in the neighbourhood, but he continued to live undisturbed in Aldermanbury for several years. Finally, for his services to the Crown he was, towards the end of 1681, created a baronet, with special remainder to any sons he might have by his second wife.²

In January 1681 Charles dissolved the obnoxious Parliament which had caused so much damage in the Tory ranks. The ensuing General Election confirmed the King's worst fears by returning a predominantly Whig assembly, which was pledged to accept nothing short of the permanent exclusion of the Duke of York from the succession. Charles decided to meet the new Parliament in Oxford, where he knew that the Whigs would at least be deprived of the assistance of the London mob. Nevertheless, the Whigs felt that they had the whip hand of the

¹ Woolrych, p. 79; Luttrell, i, 75, 83.

² November 17, 1681. The patent of creation described him as "of Bulstrode in [the parish of] Hedgerley, Co. Buckingham" (G.E.C., *Complete Baronetage*, iv, 122).

King, who was dependent upon them for supplies, and they were fully determined that there should be no more prorogations and dissolutions. But Shaftesbury and his friends had reckoned without French gold and the ingenuity of their own monarch. By accepting in secret three years' supply from Louis XIV Charles became financially dependent upon France, but was his own master at home.

He was therefore able to take the recalcitrant Commons by surprise. He could only dissolve Parliament in his robes of State, and by a clever ruse he had managed to have them conveyed to him in a sedan chair with drawn curtains, which every one thought contained one of his lords-in-waiting. Thus when the Commons were summoned to the Upper House to hear what they expected would be the King's surrender they were confronted with a serenely triumphant Charles, who bade them begone. This unlooked-for announcement produced something like a panic among the Whigs, who believed that if they lingered a moment longer in Oxford Charles would set his guards on them to chase them out. "It is not to be expressed what clutter there was in town about getting off," observed Roger North. "The price of coaches mounted cent. for cent. in a quarter of an hour." ¹

Charles made up his mind to govern from now on without Parliament, and he adhered firmly to this intention, for he never summoned another Parliament as long as he lived. The consequence was that the struggle between the two political parties was transferred from the Parliamentary arena to the courts of justice, where it continued to be carried on with extreme bitterness and cruelty. For some time past the King's Chief Minister and favourite had been Laurence Hyde, shortly to be made Earl of Rochester, and as the son of Charles's old friend and adviser Clarendon he was an admirable instrument of High Tory reaction. Untrammelled by Parliament, Charles found himself at liberty to exercise the executive power to the utmost; and its use was especially directed towards making the Whigs pay dearly for their part in having engineered the Popish Plot. Shaftesbury and his principal followers were all arrested. Throughout every county the militia and magistracy were reformed in accordance with royal precept. Ardent

¹ *Examen*, p. 105.

Papist-hunting justices were everywhere replaced by magistrates who could be relied upon to administer the laws against Dissenters with the utmost rigour. Every means was taken to crush the Whig party and goad its leaders to acts which might prove their undoing. Truly the hour of Tory vengeance was at hand, and in the ensuing drama of the courts Jeffreys was to play a leading part.

The first victim was an understrapper in the Shaftesbury faction named Stephen Colledge, known popularly as the "Protestant joiner," for he was a carpenter by trade. He was also a fanatical enthusiast in the Whig cause, and was the author of most of the political squibs and caricatures which had appeared at the time of Wakeman's acquittal attacking the King and Chief Justice Scroggs. He carried on his propaganda during the sitting of the last Whig Parliament at Oxford, where he was actually seen in arms and heard talking treason. "I have lost the first blood in the cause," he exclaimed, when an irritated Tory hit him on the nose, "but it will not be long before more is lost." He was right, for he was to supply it himself.

Colledge was arraigned at the Old Bailey in July on a charge of treason, but the Grand Jury, which had been cleverly picked by the Whig Sheriffs, refused to find a true bill against him. The indictment was thereupon removed to Oxford, where a Tory Grand Jury committed the unfortunate joiner for trial before a special commission in that town presided over by Chief Justice North. On his way to the trial the prisoner was taken into a house and deprived of all his papers; and, although these were subsequently restored to him in court, they greatly assisted the prosecution in the management of their case, enabling the Crown counsel not to call certain witnesses whom Colledge could have discredited in cross-examination. Chief Justice North must take the blame for permitting this wholly inexcusable procedure.¹

The trial began at nine o'clock in the morning, and lasted for seventeen hours. Each side produced an amazing mass of evidence contradicting the other, and when the Chief Justice started his summing up at past one o'clock on the following morning every one was tired out. But Serjeant Jeffreys for the Crown did his best to enliven proceedings. At the outset

¹ Howell, *State Trials*, viii, 550; Stephen, i, 406.

Colledge asked that the Crown witnesses should be examined separately, and not in each other's presence.

"Here are several of them," he said, pointing to where they were standing in court. "They are all of a gang."

The chief witness for the prosecution was the informer Stephen Dugdale, who had given evidence for the Crown in several of the Plot trials. He said there were pistols in Colledge's room at Oxford.

"Hark you now," said Jeffreys to him. "You talk of pistols. Do you know that he had any pistols in his holsters at Oxford?"

"Yes, he had," answered the witness.

"Yes, I know that," chimed in the prisoner. "I didn't deny it."

"I think a chisel might have been more proper for a joiner," Jeffreys observed.

An Irishman named Haynes was then called to prove that the prisoner had confided in him that he intended to seize the King at Oxford "and bring him to the block as we did the loggerhead his father." When the Crown counsel had finished with him Jeffreys turned to the prisoner: "Mr Colledge, if you will ask him any questions you may."

"Is it probable I should talk to an Irishman that does not understand sense?"

Mr Haynes was somewhat naturally annoyed. "It is better to be an honest Irishman than an English rogue," was his neat retort.

But Jeffreys intervened to keep the peace. "He does it but to put you in a heat," he told the Irishman. "Do not be passionate with him."

The prisoner called a string of witnesses, including Titus Oates, who gave a great deal of contradictory evidence. Oates flatly accused Turberville, one of the Crown witnesses, of turning his coat.

"Dr Oates," said the Attorney-General, Sir Robert Sawyer, "Mr Turberville hath not changed sides: you have. He is still an evidence for the King: you are against him."

"Mr Attorney," said Oates, who was getting nettled, "I am a witness for truth against falsehood and subornation; and it can plainly be made to appear there is subornation against the Protestants. And, moreover——"

Chief Justice North interrupted, "Mr Oates, you would do well to explain yourself."

Jeffreys rose to his feet and turned towards Oates. "If there be any subornation relating to Mr Turberville or any of the other witnesses that have sworn against Colledge, make it out, Doctor."

Oates then did his best to show that Dugdale and the others had been bribed to turn against their former associates.

"Mr Oates is a thoroughpaced witness against all the King's evidence," remarked the Attorney-General at the end of Oates's tirade.

"And yet," interposed Jeffreys, "Dr Oates had been alone in some matters had it not been for some of these witnesses."

"I had been alone perhaps, and perhaps not," retorted Oates angrily, "but yet, Mr Serjeant, I had always a better reputation than to need theirs to strengthen it."

"Does any man speak of your reputation?" asked Jeffreys sweetly. "I know nobody does meddle with it, but you are so tender."

Oates then proceeded to contradict Dugdale's testimony. Dugdale had sworn that an illness which he had was due to an attempt which the Romanists made to poison him, but Oates had a very different explanation of the malady. "There was a report given out by Mr Dugdale's means that Mr Dugdale was poisoned," he informed the bench; "and in truth, my lord, it was but the pox." This charge Dugdale stoutly denied.

"Here is Dugdale's oath against Dr Oates's saying," said Jeffreys.

Oates threw a furious glance in the direction of the Crown counsel. "Mr Serjeant," he hissed, "you shall hear of this in another place."

There was a final encounter between the two. Oates referred to Smith, another of the Crown witnesses, who had spoken of a City alderman named Wilcox as a man who contributed money for the purchases of arms. "I think," he added rather unwisely, "Sir George Jeffreys knows Alderman Wilcox is a man of another employment."

Jeffreys was on his feet in an instant. "Sir George Jeffreys does not intend to be an evidence, I assure you," he said curtly.

"I do not desire Sir George Jeffreys to be an evidence for me," retorted Oates, in an attempt to hit back at his tormentor. "I had credit in Parliaments, and Sir George had disgrace in one of them."

Jeffreys bowed ironically. "Your servant, Doctor; you are a witty man and a philosopher."

Jeffreys also came off best in an encounter with another of the prisoner's witnesses named Lun, who was employed in the Devil's Tavern, in Fleet Street. Lun was nicknamed "Scatter 'em," because he had once been heard praying to the Lord with pious oaths to scatter the Cavalier army. He objected to Jeffreys' testing the statements which he had made in his examination-in-chief.

"We know you, Mr Lun," Jeffreys reassured him. "We only ask questions about you that the jury may know you too as well as we." Then he went on playfully, "We remember what once you swore about an army."

"I don't come here to give evidence of anything but the truth," said Lun, in an injured tone. "I was never upon my knees before the Parliament for anything."

"Nor I neither for much," retorted Jeffreys, not in the least put out. "But yet once you were when you cried, 'Scatter 'em, good Lord.'"

After his repeated and frequently successful cross-examination of the prisoner's witnesses Jeffreys was put up some time after midnight to answer the case for the defence. This he did in an amazingly powerful speech. "If Dugdale, Smith, and Turberville be not to be believed," he told the jury, "you trip up the heels of all the evidence and discovery of that plot. Then I will conclude to you, gentlemen, and appeal to your consciences; for, according to the oath that has been given to you, you are bound in your consciences to go according to your evidence, and are neither to be inveigled by us beyond our proof, nor to be guided by your commiseration to the prisoner at the bar against the proof; for as God will call you to an account if you do an injury to him, so will the same God call you to account if you do it to your King, to your religion, and to your own souls."

Chief Justice North's summing up was most casual and incomplete, and he capped this inept performance by telling

the jury that he could not remember any more of the evidence and inviting them to refresh themselves with two bottles of sack before they retired to consider their verdict. The jury accepted this invitation with alacrity, and after an hour's absence returned about three o'clock in the morning to find the prisoner guilty. Colledge was duly sentenced and executed.

This trial had one important result. It involved the total discredit of the Plot witnesses, and none of them could be employed again. Bedloe was already dead "of a fever occasioned by drinking cider while he was very hot, having rid post." Dugdale, who really had the infamous disease imputed to him, gave way to drink and died miserably a year later, imagining that he was being pursued by the ghost of one of his victims. Turberville, who also succumbed to dipsomania, went to the grave about the same time. The others were all discarded by the authorities and lost their pensions, including Oates, who retired to the City. But the doctor was not forgotten, and least of all, as we shall see, by Serjeant Jeffreys.

II

It will be remembered that shortly after his dismissal from the Recordership of London Jeffreys had been elected Chairman of Middlesex Sessions. This position, which involved presiding over the Middlesex and Westminster justices, was more important than might perhaps at first be supposed. Besides holding the customary Quarter Sessions or General Sessions of the Peace for their county to deal with minor offences brought before them, these justices also attended when bills of indictment, which were required in more serious cases, such as those of treason or felony, were presented to the Grand Jury, whose duty it was, after first hearing the evidence for the prosecution, either to accept or to reject the bills. Since Middlesex, unlike other counties, had no assizes of its own, cases in which a true bill was returned by the Grand Jury were sent for trial to the Old Bailey, where they were included in the calendar with the City cases, but subject to this difference, that they came before twelve petty jurors from Middlesex.¹ It may be

¹ This is mentioned since confusion has sometimes arisen from the fact that at the Old Bailey Sessions both Middlesex and London cases were tried by virtue of a single Commission of Gaol Delivery.

added that the jurisdiction of the Middlesex magistrates was considerable, extending throughout the whole of the Metropolis and adjacent territory, with the exception of the seven hundred acres comprising the City and a few specified 'liberties' outside it. The City Sheriffs, however, selected the Middlesex Grand Jury panels.

The Middlesex justices held their sessions at Hicks's Hall, close by the City boundary in Clerkenwell.¹ The summary punishments for petty convictions ordered by the bench were carried out at the pillory, stocks, and whipping-post attached to the court-house. They covered a variety of crimes. But there was one type of offence to which the new Chairman was instructed by the King to pay particular attention. The laws passed against Dissenters in the early years of the Restoration, popularly known as the Clarendon Code, had hitherto been enforced with the greatest lenience. Dissenters were forbidden to congregate for worship in their conventicles; if ministers they were not permitted to reside within five miles of a corporate town; nor were any of them allowed to hold any public office without first receiving the sacrament according to the Anglican rite. Breaches of the Code were henceforth to be dealt with rigorously, and an exemplary beginning was made at Hicks's Hall, where the magistrates under their Chairman's stimulus ordered all parish constables in the county to break up conventicles and carry off the ministers and congregations to gaol. As an informer could claim a third of any fines imposed by the bench a regular system of espionage sprang up, not only in Middlesex, but in other counties where the King had given orders that the anti-Nonconformist laws were to be executed. The Whigs, who had many Dissenters in their ranks, had therefore to face a religious as well as a political persecution, which was quite as bitter while it lasted as anything which the Catholics had suffered.

Anxious as he was to carry out the King's wishes, Jeffreys and the other magistrates at Hicks's Hall found themselves

¹ So called after Sir Baptist Hicks (afterwards first Viscount Campden), a wealthy mercer, who built it in the reign of James I. It continued to be used as a court-house until 1782, when it was pulled down. Within living memory, however, milestones along the Great North Road were to be seen marked with the number of miles "from Hicks's Hall" (J. C. Jeaffreson, *Middlesex County Records* (1887, etc.), iv, 346).

perpetually thwarted by the Whig Sheriffs, Henry Cornish and Slingsby Bethel, who were also Nonconformists, but had taken the necessary oaths in order to qualify for office. These men carried out their intention of packing the Grand Juries, and the juries dutifully returned "Ignoramus" to any bill which concerned a Dissenter or a member of their party. But Jeffreys was determined to beat the Sheriffs at their own game. He began by ordering them in the name of the bench not to return any further juries, but to let the bailiffs do it. Of this order the Sheriffs took no notice. Thereupon Jeffreys consulted with the Attorney-General, Sir Robert Sawyer, and between them they discovered a statute of Henry VIII which empowered the justices to reform the Grand Jury panels and furthermore to inflict a heavy fine on the Sheriffs who refused to return the altered panel.¹

At the sessions at Hicks's Hall in August 1681 the justices peremptorily ordered the Sheriffs to take a number of names out of the jury panel and substitute others, in accordance with the old statute. The Sheriffs refused, whereupon the justices selected fifteen Tory jurors and proceeded to administer the oath to them. The incident recurred two months later, when Jeffreys as Chairman objected to a juror named Charlton and ordered the Under-Sheriff to remove his name from the panel. This the Under-Sheriff refused to do, and Jeffreys had his action recorded. The Chairman then adjourned the sessions for two days, and ordered the Sheriffs to attend at the adjourned court. When the court met two days later the new Recorder of London, Sir George Treby, who was an ardent Whig, appeared and informed the bench that the Sheriffs were occupied with mayoral business and therefore too busy to attend. The new Recorder was supported by several counsel, who argued that the Sheriffs were not bound to attend. Jeffreys and the other magistrates retorted by fining the Sheriffs £100. The Court of Aldermen and the Common Council thereupon voted that the fine, if enforced, should be paid out of the City funds. Jeffreys countered this by discharging all the Grand Jurors empanelled by the Sheriffs and getting a fresh lot empanelled at the King's Bench bar.²

Cornish and Bethel had been succeeded in the City Shrievalty

¹ Luttrell, i, 115.

² *Ibid.*, i, 119, 133, 134, 137, 139, 141.

by two more Whigs named Shute and Pilkington; and it was clear to the Government that so long as the Whigs were able to control the jury panels for London and Middlesex convictions in cases in which they had an interest were impossible. For this reason Shaftesbury had had to be released, as the Grand Jury naturally declined to return a true bill against their leader. Jeffreys and the Crown lawyers now put their heads together to see how it might be possible to secure the election of Tory Sheriffs. That brilliant but dissipated lawyer Edmund Saunders suggested that the City should be served with a writ of *Quo Warranto*. This required the City authorities to give an account of their liberties, and if it could be proved that they had committed a wrong, such as collecting unlawful tolls or selling offices, then the City charter might be adjudged forfeit to the King. Pending the granting of a new charter the King would appoint the Mayor and Sheriffs, and the granting of a new charter would, of course, be on his Majesty's own terms. This suggestion was adopted, and the City was served with the writ in December 1681.

The Middlesex magistrates did not re-elect Jeffreys as their Chairman at the beginning of 1682.¹ Probably they had had enough of him and his overbearing ways. Nevertheless, he remained a member of the bench and continued to stimulate his colleagues in the work of harrying Dissenters. Meanwhile the City set about the almost hopeless task of defending its liberties. The Whigs realized that they had made a tactical blunder in allowing Sir John Moore to succeed Sir Patience Ward as Mayor, for, though Moore was nominally a Tory, the Whigs considered him of too little consequence to give any trouble. However, at a City feast in May 1682 Moore surprised the Whigs by reviving an old custom by which the Mayor could nominate one of the Sheriffs for the ensuing year by drinking to him. The recipient of the Mayor's toast was the Hon. Dudley North, brother of Chief Justice North and the incomparable Roger. He was, so Roger tells us,

bred a Turkey merchant and had traded at Smyrna, but passed most of his time in Constantinople, where he fell into acquaintance

¹ According to Luttrell (i, 167), Sir William Smith, Bart., was elected Chairman of the Middlesex Sessions on February 23, 1682. He was a Royalist and a neighbouring landowner of Jeffreys in Buckinghamshire, which he represented in Parliament from 1661 to 1679.

and vast dealings with Beys, Bashaws, and other great officers of the Port, and had run very great hazards with them, but had the good fortune to reap the profit he expected by it.

The main feature about him was that he was rich and also willing to serve the Tory interest in the Shrievalty.¹

A few weeks later, at the Midsummer meeting of the Common Hall, the Liverymen were asked to confirm the Mayor's choice of one Sheriff and to vote in the other. The proceedings developed into a riot, and each side declared its candidates elected. The Lord Mayor, Sir John Moore, was assaulted and got his hat knocked off. The Whig Sheriffs, Shute and Pilkington, who had insisted on continuing the poll after the Mayor had dissolved the Hall, were sent to the Tower on the Mayor's complaining that they had caused a grave disturbance. After repeated sessions at the Guildhall, lasting throughout the summer, the Tory candidates were eventually declared elected. The Whigs doggedly obstructed the poll, and even when the new Sheriffs were being sworn their candidates, Papillon and Dubois, laid their hands on the book, so that the Lord Mayor had to command them in the King's name to depart and keep the peace. Jeffreys followed the course of proceedings with keen interest, and his fine house near the Guildhall was put at the disposal of North and his colleague.²

III

Shortly before the final declaration of the Sheriffs' election Jeffreys was called away to the Chester circuit, since the assizes were due. He went first of all for a few days to Acton, when his father seems to have forgiven him for his extravagance on the occasion of his last visit. The Chief Justice found the country in a disturbed state, for the Duke of Monmouth was in Chester and had recently roused Protestant sentiment by riding in a horse-race and winning the plate, which was worth sixty pounds. This victory was celebrated by an orgy of bonfires and window-breaking on the part of the Duke's partisans, including the Mayor of Chester, whose infant daughter was Monmouth's godchild.

On September 16, 1682, Jeffreys, writing from Acton to Sir

¹ North, *Examen*, p. 602; Luttrell, i, 186.

² North, *Lives*, i, 223.

Leoline Jenkins, one of the Secretaries of State in Whitehall, described these proceedings in a characteristic letter and requested that his jurisdiction be temporarily enlarged to deal with the more disorderly and indiscreet Whig element.¹

I doubt not you have had an account of the Duke of Monmouth's reception at Chester. The pretence of his honouring these parts was, you know, a race. . . . His Grace won the plate to the joy of all true Protestants, for which bonfires have been made in Chester and most of the honest people's windows broke, and the plate bestowed on the Mayor's child, which his Grace has christened Henrietta. Applications are daily made to me about these outrages, being now at Wrexham within eight miles. I am next Monday at Holywell, where I expect the continuance of clamour.

But there is an accident that may be useful to his Majesty's service. Chester has not the power of trying treasons. There are at present three persons in the city gaol for clipping. If a commission of Oyer and Terminer might be expedited presently (I begin my circuit there Monday sennight and continue a week) and directed as was about 1663 for treasonable words (the Clerk of the Crown has the precedent) and name not the Mayor nor any [of] those rascals concerned in his pageantry, it may bear up the honest party of the town at present dispirited. . . . If this came to me next week, before the assizes were ended, which is also the fair time, I hope I could manage it for my master's service.

This letter was read to Charles at a meeting of the Privy Council, and orders were given for the rapid dispatch of the commission which Chester's Chief Justice had requested. Jeffreys was furthermore congratulated on his foresight. Secretary Jenkins wrote back:

My lord (for so I must call you now that this script is to find you in your scarlet robes), . . . you may assure your friends in Chester that his Majesty is very well pleased with those that gave no countenance to the riotous and dangerous concourse that attended the Duke of Monmouth's coming into these parts, and that it is his express desire to have the laws put into execution with vigour against those that were guilty of any disorder, wherein he is assured you will do your part.²

Jeffreys reached Chester as he had planned, and put up with

¹ *C.S.P. (Dom.)*, 1682, p. 395 (*S.P., Com., Car. II*, 420, No. 71).

² *C.S.P. (Dom.)*, 1682, p. 417 (*S.P., Dom., Entry Book*, 68, at p. 38).

the Governor, Sir Geoffrey Shakerley, in the castle. "I arrived here last Saturday," he wrote to Jenkins on September 25,

and imparted yours to the loyal gentlemen of the county, which was very grateful, and the commission came here in the nick of time. I ordered precepts to the Sheriffs of the City to prepare a Grand Jury against to-morrow and hope [to] give you a good account per next. I expect some dispute betwixt the mayor, the Recorder, and myself about the extent of the commission, they being very unwilling that any stranger should intermeddle in their late disorders, especially the mayor and Alderman Streete, who I could have wished had not been in the commission by reason he is a pestilently troublesome fellow. The greater part, I hope, are of our side. The parsons yesterday did their parts, for which I gave them public thanks, which I hear has offended the mayor.¹

As he anticipated, Jeffreys had a lively time when the assizes opened and the commission of Oyer and Terminer was read. Recorder Williams denied the authority of the commission, and argued that it was an infringement of the City charter. He reminded the Grand Jury of their oaths as freemen, "by which they were bound to defend their just liberties," adding what was no doubt intended to be a cut at the Chief Justice, that he hoped "no such vipers were bred within themselves as would suck the blood out of their own veins." In the face of the loud hum of disapproval in court Jeffreys explained the meaning of the commission in such persuasive language that the Grand Jury returned mostly true bills. He then insisted on dealing with the rioters and others whom the commission empowered him to try.²

From Chester he proceeded to Flintshire, where he concluded the assize. Among those brought before him at Mold, so it is said, was his old schoolmaster Philip Henry, the great Non-conformist preacher, who had been prosecuted by the Grand Jury for keeping a conventicle. His goods had been distrained, and carts had even been pressed into service on the road for the purpose of carrying them away. It is to Jeffreys' credit on this occasion that he remembered the old man with feelings of affection, and quashed the proceedings against him. He even inquired jocularly "by what new law the gentry pressed carts to remove goods distrained for the offence of going to

¹ *C.S.P. (Dom.)*, 1682, p. 426 (S.P., Com., Car. II, 420, No. 112).

² *C.S.P. (Dom.)*, 1682, pp. 440, 459 (S.P., Dom., Car. II, 420, Nos. 127, 155).



THE GUILDHALL

From an engraving in James Beeverell's *Les Délices de la Grand' Bretagne*. 123



ANTHONY ASHLEY COOPER, FIRST EARL OF SHAFTESBURY
John Greenhill (?)
National Portrait Gallery

meeting." Jeffreys also saw to it that any further proceedings which the local authorities thought fit to take against Henry should be allowed to drop.¹

Jeffreys returned to London at the beginning of October, leaving the county palatine in a much less disturbed condition than he found it. Things were quieter in the capital. The Whigs were definitely on the run. Shaftesbury was, however, working desperately in secret, busily engaged on one last effort to rally his followers, for now that the King's intention to rule despotically was plainly apparent the Whig leader determined to stake all on armed rebellion. He knew too that his life would almost certainly be forfeit once the Tory Sheriffs had come into office and had started to pack the juries. So in the few remaining weeks at his disposal he tried to persuade Monmouth to head a rising. It was the only chance left, but Monmouth by temporizing and delaying threw it away. Shaftesbury thereupon abandoned the course, and went into hiding. Towards the end of November he succeeded in escaping to Holland, a dying man.

Thus passed from the political stage the most eminent figure of his times, who, it must be acknowledged, whatever his faults, embodied in his character the first modern democrat, the first modern party leader, and the first modern Parliamentary debater. His flight, followed less than two months later by his death from an ulcer of the stomach, deprived the Whigs of the only leader who could command the support of London. But for Jeffreys it was good news, for it meant that the battle in the City was as good as won.

IV

Most of the prominent trials in which Serjeant Jeffreys had appeared and continued to appear were political, and, as we have seen, it was in the nature of the times that this should be so. But he occasionally represented the Crown in trials where politics were not the fundamental issue. One of these trials, which came on after Jeffreys' return from Chester in the Michaelmas term, was that of Lord Grey of Warke for the sensational crime of "debauching" Lady Henrietta Berkeley,

¹ Woolrych, p. 182; M. H. Lee, *Diary and Letters of Philip Henry* (1882), p. 324.

and it aroused very considerable interest in London when it was tried.

Ford, Lord Grey of Warke, was a young Whig peer in his twenties who was married to a daughter of the Earl of Berkeley. He was a warm partisan of Monmouth, and he had spoken and voted in the House of Lords in favour of the Exclusion Bill. He had already been indicted, along with the Whig Sheriffs Shute and Pilkington, for his part in the riots which accompanied the shrieval elections earlier in the year, but this case had not yet come to trial. He was also a zealous Protestant, but his religious zeal did not prevent him from seducing his sister-in-law Henrietta, a virgin under eighteen years of age. He had managed to carry on a clandestine intrigue with this lady for some time and to remain undetected, although he had a number of narrow escapes. On one occasion he was locked up in her chamber for two whole days and lived on a diet of sweetmeats. He subsequently confessed his guilty passion to a member of his wife's family, and declared that he had made several efforts to cool it. These efforts took the characteristic form of making love to two other ladies, "whom he courted, and enjoyed both of them." But his feelings only continued more ardently than before, and, what is more, the object of this incestuous passion returned them as warmly.

Affaires of this kind cannot, as a rule, be prolonged indefinitely without the parties running the risk of their relationship being discovered. One day the young lady's mother came upon some compromising correspondence, and the secret was out. The Countess of Berkeley reproached her son-in-law in the strongest terms for his conduct. Lord Grey avowed his guilt amid floods of tears, craved forgiveness, and begged Lady Berkeley not to say anything about the business to her husband. Lady Berkeley agreed on condition that Grey should see no more of her daughter Henrietta, and in her own interests took her away to the Durdans, their place near Epsom. However, shortly after this Grey had occasion (so he said) to visit his own estate in Sussex, and asked to be allowed to dine at the Durdans on his way. But he arrived so late that Lady Berkeley could not avoid asking him to stay the night. He left the next afternoon, but the same evening Lady Henrietta herself disappeared, with the aid of Grey's manservant Charnock. By him she was

taken to his master's lodgings in London, where Grey continued to keep her concealed from her parents. Grey, of course, when taxed with the matter denied all knowledge of her whereabouts, but the family soon discovered that he was keeping her as his mistress. He then admitted to the Berkeleys that he was in communication with her, and, to quote Jeffreys' words in his opening, "as long as he had run such a course for obtaining that which was his greatest pleasure, he would not now part with her, but upon such terms that he might have access to her when he pleased—to such a height of confidence was this gentleman arrived in this barbarous and infamous wickedness." In retaliation Lord Berkeley determined to expose the scandal, and he accordingly prosecuted on a charge of conspiracy Grey, Charnock, and his wife, and several others who had assisted in the abduction.

Grey was first served with a writ requiring him to restore Lady Henrietta to her father, and on his failing to comply he was committed to prison at the beginning of November 1682. A fortnight later he was brought to trial at the King's Bench bar in Westminster Hall, and the proceedings were as lively in incident as any in which Jeffreys had appeared.¹

Just as Jeffreys was finishing his opening speech for the Crown Lady Henrietta herself came into court and sat down at the table immediately below the judges' seats. Her father promptly jumped up, and addressed Chief Justice Pemberton, who was presiding: "My lord, my daughter is here in court. I desire she may be restored to me."

Before the Chief Justice could speak Jeffreys replied, "Pray, my Lord Berkeley, give us leave to go on; it will be time enough to move that anon. Swear Lady Berkeley."

However, Lady Berkeley was so overcome by the sight of her errant daughter that she was unable to speak. One of her other daughters, Arabella, who was to give evidence, was therefore sworn first. But Lady Arabella did not get very far before Lord Grey, who was standing below the bar, began to stare at her so hard that, as she said, he "doth put me quite out of countenance and patience."

Grey was thereupon told by the presiding judge to desist

¹ Howell, *State Trials*, ix, 127; R. Skinner, *Reports* (1728), pp. 61, 76, 81; *C.S.P. (Dom.)*, 1682, p. 528.

and resume his seat, which he did. But this was not good enough for Lord Berkeley, who was seen to be on his feet again. "He would not," said Berkeley, "if he were not a very impudent, barbarous man, look so confidently and impudently upon her."

"My lord," interposed Jeffreys, "I would be very loth to deal otherwise than becomes me with a person of your quality, but indeed this is not so handsome, and we must desire you to sit down." Then he turned to Lady Arabella. "Pray go on, madam."

When Lady Arabella had finished her mother was asked whether she now felt well enough to give her evidence, and she said she was. After she had been sworn she leaned forward, her face almost entirely concealed by a hood, and spoke with many signs of emotion and distress. Twice in the course of her evidence she fainted, but at last, with extreme difficulty, she got through the harassing story of her son-in-law's perfidy. A variety of other witnesses then identified Grey and his mistress as having lived together in various lodgings in London.

Jeffreys seems to have enjoyed this case, and he raised several laughs. One which was against himself occurred during his examination of a maid employed in one of the lodgings where the guilty couple stayed. She admitted that there was a mysterious lodger in the house whose name she did not know and whom she never saw.

"Did you know what linen she brought with her?" asked Jeffreys. "Did you wash any for her?"

"Yes, one shift," replied the maid.

"What kind of shift was it?"

"I said it could be no person of quality by her shift."

"Why so?" questioned Jeffreys.

"Well," said the maid, "because the body was finer than the sleeves, and ladies use to make the sleeves finer than the body."

"A pretty evidence," chuckled Williams, who was one of the defendants' counsel, amid laughter.

But Jeffreys soon got his own back. The prosecution had alleged that Grey's servant Charnock had tried to get lodgings in the house of a married couple called Patten for the purpose of keeping Lady Henrietta there. This was, in fact, true, and Lady Henrietta had visited the lodgings with Charnock, but

had not taken a room, since none of them were suitable. But Mrs Patten, who was a midwife, put forward the unlikely story that Mrs Charnock was pregnant, and that was the object of Charnock's visit. According to her, Charnock was very vague about the time the room would be required, as his wife "did not know her own reckoning."

"Are not you a midwife?" asked one of the defendants' counsel.

"I was Mrs Charnock's," replied the witness.

"Now," said Jeffreys, smiling, "you are sweetly brought to bed." The purpose of Charnock's visit, reinforced by the presence of Lady Henrietta herself, was quite clear, and the court paid no attention to Mrs Patten's evidence.

When they had opened their case the defence proposed to call Lady Henrietta, which, as she was not a party to the case, they were legally entitled to do. The Crown counsel tried to stop this on the ground that, though not specifically charged, she was highly criminal in that she aided and abetted the other conspirators. There was a further reason, which Jeffreys indicated, though it must have been obvious to every one in court. "Truly, my lord," he said, addressing Chief Justice Pemberton, "we would prevent perjury if we could."

"Brother Jeffreys," replied the Chief Justice, "we cannot oppose it if they will press it, and she consent. But I tell you what I think of it. I think there is very little credit to be given to what she says."

Lady Henrietta accordingly came to the table and was sworn. She was cautioned and reminded that she was on oath, but she persisted in giving the false testimony expected of her. Grey had nothing to do with her leaving home, which was entirely her own design (she said), nor had the Charnocks helped her in any way to escape; and she went on to assert that she did not see Grey until many weeks afterwards, and then only once by chance in a hackney-coach. When she wanted to tell the court the real reason why she left her parents' house she was stopped, and the Chief Justice spoke to her severely. "You have injured your own reputation," he said, "and prostituted your body and your honour, and are not to be believed."

As the jury were withdrawing after Pemberton's summing

up Lord Berkeley repeated his request that he might have charge of his daughter. The Chief Justice seemed to agree, but first asked her whether she was under any custody or restraint. Lady Henrietta said she was not. "Then," said Pemberton, "we cannot deny my Lord Berkeley the custody of his own daughter."

Henrietta then astonished every one by declaring that she was married.

"To whom?" asked Pemberton.

"To Mr Turner."

"What Turner?"

"He is here in court."

A gentleman accordingly stepped forward and informed the bench that he really was Lady Henrietta's husband. In answer to a question he said he lived sometimes in Somersetshire. Then Mr Justice Dolben, who was one of the puisne judges on the bench, thought he recognized him. "He is, I believe, the son of Sir William Turner that was the advocate. He is a little like him."

"Ay," remarked Jeffreys, "we all know Mr Turner well enough. And, to satisfy you this is all part of the same design, and one of the foulest practices that ever was used, we shall prove he was married to another person before that is now alive and has children by him."

"Ay, do, Sir George, if you can," replied Mr Turner confidently, "for there never was any such thing."

Jeffreys was not, however, in a position to prove his assertion, and after a further unsuccessful attempt to extract an admission from Mr Turner he wisely subsided.

Chief Justice Pemberton then informed Lord Berkeley that he was free to take his daughter, and if Mr Turner really was married to her, then that gentleman could have his remedy.

"I will go with my husband," said Lady Henrietta.

"Hussy, you shall go with me home," said her father firmly.

Three times did Lady Henrietta declare she was going with her husband. Finally Lord Berkeley lost his temper and exclaimed, "Then, all that are my friends, seize her, I charge you."

"Nay," said the Lord Chief Justice, "let us have no breaking of the peace in court."

The court thereupon broke up and the parties and spectators prepared to depart. But in the hall outside Lord Berkeley again tried to get possession of his daughter, and swords were drawn. However, Pemberton came up in the middle of the scuffle and ordered his tipstaff to remove Lady Henrietta and keep her in custody. This was done, but she was released a few days later at the end of the term, and allowed to go off with Mr Turner, who had voluntarily shared her imprisonment. Meanwhile the jury brought in a verdict of guilty against all the defendants except one.

As it was the end of term the defendants in the normal course would have come up for judgment at the beginning of the following term. But in the interval the Law Officers decided, having regard to all the circumstances, to discontinue the proceedings, and no motion for judgment was ever made. This action was apparently justified, since Lady Henrietta very soon left Mr Turner and returned to the protection of her former lover.

v

During this same year (1682) Jeffreys participated in a number of civil cases which, though scantily reported and of less general interest than the State trials, nevertheless deserve to be mentioned. They show that he could at least hold his own at *nisi prius*, while his arguments, as in his later and better reported civil cases, go a long way to disprove the accusation so frequently brought against him that he knew little or no law. Two of these were actions in which the Duke of York was plaintiff, and Jeffreys represented the Duke as his Solicitor-General.

In the Easter term Boldsworth, the King's perfumer, sued Thomas Pilkington, who was then Sheriff, for slander at Southwark assizes. Pilkington was alleged to have said to Boldsworth, "You are a broken fellow; go home and pay your debts." Jeffreys appeared for the plaintiff, and so impressed the jury that they brought in a verdict of £800 damages against the Sheriff. The verdict occasioned some astonishment, since it was not proved that the plaintiff had suffered any damage, and, what is more, the defendant proved that the plaintiff had given him considerable provocation before he

uttered the slander.¹ Serjeant Maynard subsequently moved in the Court of King's Bench for a new trial, but his motion, vigorously opposed by Jeffreys, was dismissed.²

Another civil case in which Jeffreys appeared this year was an action brought by Samuel Verdon, a well-known Norfolk attorney, against the Speaker's messengers in the House of Commons. Verdon was ordered to be taken into custody by the House for some breach of privilege or contempt, and the warrant for his arrest was signed by Speaker Williams. The messengers went down to Norfolk to arrest him, and, though they found they had a difficult man to deal with, Verdon was not without a sense of humour. In bringing him up to town, according to Roger North,

he would not be prevailed upon either to mount or dismount his horse; but forced the messengers at every turn to lift him on and off, and at the same time had his clerks taking notes in order to testify these assaults of his person; for every one of which he intended to bring an action of battery.

It so fell out that as Verdon was on the road, about midway between Norwich and London, Parliament was prorogued, by which the warrant became invalid, and the arrest then amounted to false imprisonment: In the action Jeffreys appeared for the plaintiff Verdon, while the defendants were represented by Speaker Williams himself. Williams pleaded that the messengers carried out the arrest in ignorance of the prorogation. Suddenly the plaintiff stepped forward. "My lord," he said, "if Mr William Williams will here own his hand to the warrant I will straight discharge these men." The result was that the plaintiff got a verdict, and Jeffreys was delighted with his client's gasconade.³

On the day after the trial of Lord Grey of Warke Jeffreys appeared in another slander action against Pilkington, this time in the Court of King's Bench in Westminster Hall. The plaintiff was the Duke of York, and he claimed the truly enormous sum of £100,000 as damages. It was alleged on his behalf that at a meeting of the Court of Aldermen in the Guildhall, convened for the purpose of congratulating his

¹ Proof of special damage in slander actions was not required in the seventeenth century.

² Luttrell, i, 174, 185-198; *C.S.P. (Dom.)*, 1682, pp. 141, 199, 209.

³ North, *Lives*, i, 283.

Royal Highness on his return from Scotland, Pilkington had dissociated himself from the motion of congratulation, saying that the Duke had "twice burned this city, and was now come to cut the inhabitants' throats." Since the case was set down for hearing after the election of the Tory Sheriffs Pilkington moved that the case be tried before a jury of another county. He was allowed to choose, and he asked for a jury from Hertfordshire, which was in due course empanelled. He might have saved himself the trouble, although his friend Sir Patience Ward perjured himself by swearing that he had not uttered the words complained of, and that the discussion about the Duke of York took place before Pilkington came into the room. "Your invention is better than your memory," was Jeffreys' significant comment to this witness. Otherwise Pilkington put up little in the way of defence, and Jeffreys' task was relatively easy. The Lord Chief Justice directed the jury that if they believed the words actually were spoken by Pilkington then they must find for the Duke of York. The jury acted accordingly, and so far gained the defendant's confidence in their partiality by casting him in the full amount of the damages claimed. Pilkington had been able to find £800 for Boldsworth, but £100,000 was, of course, quite beyond his means. The verdict was tantamount to a sentence of life imprisonment, for in those days it was customary for a defendant mulcted in damages to be kept in custody until he had discharged the debt. Thus the unfortunate ex-Sheriff had no alternative but to resign his office of Alderman and to surrender himself to the gaoler. He was restored to liberty in the following reign, and lived to share in the honours lavishly distributed at the Revolution, but he always remained somewhat of an embarrassment to his own party—"an honest but indiscreet man," as the Whig historian Bishop Burnet described him, "that gave himself great liberties in discourse."¹

The other case in which the Duke of York was plaintiff also came on in the Michaelmas term. It is known as *Dockwray's*

¹ Luttrell, i, 240, 241; *C.S.P. (Dom.)*, 1682, pp. 194, 489; Burnet, ii, 337. A report of this trial was taken down in shorthand as a matter of personal interest by a barrister named Blaney, and, although it was never published, it formed the first shorthand report of a decided case which was accepted as evidence in a subsequent trial (Howell, *State Trials*, ix, 317-320 (evidence of Robert Blaney in the trial of Sir Patience Ward for perjury, 1683)).

Case, and concerned the first attempt to establish a penny post in London. Prior to 1680 there existed no adequate provision for the carriage of letters and parcels between the different parts of the Metropolis, although a postal service operated between London and the various provincial towns, and the postal revenues were vested by statute in the Duke of York. William Dockwray (or Dockwra) set up six large sorting offices in the City to which correspondence was hourly conveyed by messengers from between four and five hundred receiving houses situated in the principal streets. When the letters had been sorted in the large offices they were delivered by messengers to all parts of the capital. The postage was uniformly one penny, which carried insurance against loss up to ten pounds in value, while parcels up to a pound in weight were accepted as well as letters. As a check on his messengers Dockwray also introduced postmarks bearing the hour at which the letter was received.¹

This ambitious scheme of a penny post naturally came into conflict with certain vested interests. The porters, for instance, complained about it, and tore down the placards from the windows of the receiving houses. It was even suggested that it was part of the Popish Plot, and Oates asserted that if the postal packets were examined they would be found to be full of treason. However, as no profits were apparently made for the first two years the authorities ignored it. In 1682 it began to pay its way, and it now seems to have occurred to Jeffreys that it might be held to infringe the Act of Parliament which made the Duke of York grantee of the revenues of the Post Office. Anyhow, he advised in the action which the Duke brought against Dockwray, and in it he represented the plaintiff.

Dockwray's counsel argued that where the Postmaster-General "had not settled an office . . . any man might." It was no more, he said, than carrying or sending a letter by a porter from Gray's Inn to the Temple, adding that this was lawful, and that anyone might employ as many porters as he pleased, which was what the defendant had done. But the

¹ "Both in conception and the details of his organization," writes Sir Evelyn Murray in his authoritative work on *The Post Office* (1927), "Dockwra was far in advance of his time, and it is a remarkable achievement to have provided London 250 years ago with a postal service which in some features at any rate compares favourably with that of the present day."

court adopted Jeffreys' argument, and held that where a post-road went through any county this meant that the county had the benefit of the postal service from the nearest post-office; and, furthermore, that, as authorized postal messengers operated in London, Dockwray's post contravened the statute which secured the postal revenues to the Duke of York. Judgment was accordingly entered for the Duke, and Dockwray had to pay slight damages. During the hearing of the case the defendant was asked by Jeffreys to submit to judgment, and it was hinted that if he did so with becoming humility he might be permitted to continue his operations on behalf of the Crown. According to Roger North, "it was thought he might have secured to himself a good office, by being commissioner for life to manage that revenue." But Dockwray "insisted on his right to the last" and refused to submit, or, as North put it, "his waywardness to the court would not give him leave to be so wise."¹

Jeffreys' action eventually resulted in considerably augmenting the Crown revenues from this source, and Jeffreys rose immeasurably higher in the opinion of the Duke of York, the immediate benefactor from this case.

VI

New Year 1683 heralded some important changes on the judicial bench. It was thought that Jeffreys might have a share in them, but as things turned out he had to wait a while longer. He did, however, benefit indirectly from the appointments.

Lord Chancellor Nottingham (Heneage Finch) had died in the previous month. He was succeeded by the scholarly and fastidious Chief Justice North, who now began his unhappy tenure of the Woolsack with the inferior title of Lord Keeper. "Here, my lord, take it," said the King, handing the Great Seal to him; "you will find it heavy."² It proved to be a remarkably accurate prophecy, in whose fulfilment Jeffreys was to play a considerable part.

A few months later North was created Baron Guilford. Meanwhile his elevation to the Woolsack had left vacant the

¹ Skinner, *Reports* (1728), p. 81; North, *Lives*, i, 275.

² North, *Lives*, i, 255.

Chief Justiceship of the Common Pleas, and it was thought either that Scroggs would be recalled from his disgrace to preside over this court or else that the post would be given to Jeffreys. But neither of these things happened, and for this reason. The great case of *Quo Warranto* against the City for the forfeiture of its charter was about to come on before the Court of King's Bench. Lord Chief Justice Pemberton was not considered sufficiently enthusiastic in the royal cause, and as the King did not wish to dispense with his services altogether he was transferred to the Court of Common Pleas. His place in the King's Bench was taken by that brilliant but now sadly ailing lawyer Edmund Saunders, who, it will be remembered, had originally advised the *Quo Warranto* proceedings and had settled the pleadings. At the same time Sir William Dolben, one of the puisne judges in the King's Bench and Jeffreys' predecessor as Recorder of London, was dismissed altogether; he was succeeded by Francis Wythens, a mediocre lawyer and a voluptuary with a notorious fondness for the bottle.

Saunders also had a taste for liquor, which has already been noticed. This failing, coupled with his sedentary habits and dislike of physical exercise, seems to have accentuated the ill-health from which he had latterly suffered, so that by the time he reached the bench he was practically a dying man. Yet, in spite of his personal habits, he was by far the most popular member of his profession, being esteemed alike for his honesty, abilities, and good-nature. Roger North has left a perfect sketch of him in his *Life of Lord Keeper Guilford*. "He was," writes North,

a very Silenus to the boys, as in this place I may term the students of the law, to make them merry whenever they had a mind to it. He had nothing of rigid or austere about him. If any near him at the bar grumbled at his stench, he ever converted the complaint into content and laughing with the abundance of his wit. As to his ordinary dealing, he was as honest as the driven snow was white; and why not, having no regard for money or desire to be rich? And for good-nature and condescension there was not his fellow. I have seen him for hours and half-hours together before the court sit stand at the bar with an audience of students over against him putting of cases and debating so as suited their capacities and encouraged their industry. And so in the Temple he seldom moved without a parcel of youths hanging about him, and he merry and jesting with them.¹

¹ *Lives*, i, 295.

In his autobiography Roger North tells a good story about a case in which Saunders and Jeffreys were both engaged, apparently on opposing sides. The action was brought by the Commissioners of Excise against a number of distillers, and one of the questions at issue was the rate at which brandy, as it was then made, should be excisable. At the time of the passing of the Act which governed excise duties spirits were not considered drinkable until they had been subjected to a second process of distillation known as dulcifying. Raw spirits, which had not been so treated, had certain commercial uses, and a lower excise duty was payable on them. Brandy, however, came by degrees to be manufactured at one distilling, and thus led to this action. Specimens of the different kinds of spirits were produced in court and handed round in phials. "The judges tasted, the jury tasted, and Saunders, seeing the phials moving, took one and set it to his mouth and drank it all off." The Chief Justice, noticing a pause and some merriment in the neighbourhood of Mr Saunders at the bar, called upon Jeffreys to go on with his evidence.

"My lord," said Jeffreys, "we are at a full stop, and can go no further."

"What's the matter?" asked the judge.

"Mr Saunders has drunk up all our evidence," replied Jeffreys amid laughter.¹

Apart from the great trial of *Quo Warranto* against the City, in which Jeffreys took no public part, almost the only other trial of importance at which the new Lord Chief Justice presided was the prosecution of Lord Grey of Warke, together with the ex-Sheriffs Pilkington, Shute, Cornish, and Bethel and a number of other prominent City Whigs, on a charge of assaulting the Lord Mayor and causing a riot at the famous Sheriffs' election in the previous year.² The defendants were originally brought to trial at the Guildhall in February 1683, when Lord Grey challenged the whole jury on the ground that it contained no knight, which was necessary when a peer was to be tried. Saunders allowed the challenge and adjourned the trial to the following term. The defendants came up again on May 11, and their counsel again challenged the jury, this

¹ North, *Lives*, iii, 93.

² Howell, *State Trials*, ix, 187.

time for the specious reason that the present Sheriffs, not having been properly elected, had no right to empanel the jury at all. This was too much for the Chief Justice, who would not permit the trial to be put off again for a trifle. "You would not have done this before another judge," he told defendants' counsel. "You would not have done it if Sir Matthew Hale had been here."

The challenge had already been read in Norman-French, as was the custom, and counsel now moved that it might be read in English.

"Why? Do you think I don't understand it?" asked Saunders. "This is only to tickle the people." However, he allowed it, much to the annoyance of the Crown counsel, among whom was Jeffreys.

As the Clerk of the Court was rereading the challenge Jeffreys exclaimed, "Here's a tale of a tub indeed!"

"Ay, it is nothing else," rejoined Saunders, "and I wonder lawyers would put such a thing upon me."

A long argument thereupon ensued from defendants' counsel, but it was eventually cut short by Jeffreys, who turned towards the bench and said, "This discourse is only for discourse' sake. I pray the jury may be sworn."

"Ay, ay—swear the jury," said the Lord Chief Justice, and this was done accordingly.

The Guildhall court was packed with a throng of Whig sympathizers, and the prosecution had the greatest difficulty in stating their case, since when they were not being heckled by the bystanders they were being obstructed by defending counsel. Saunders had to appeal several times from the bench for a fair hearing, and during his summing up he was obliged to administer a sharp reproof to the onlookers for starting to hum. Neither did Jeffreys get through his opening speech without considerable interruption. He began by explaining the procedure at the annual elections of City officers, and pointed out that, as other officers besides Sheriffs were chosen, the outgoing Sheriffs had no more right to interfere in the proceedings than a private individual. "I myself had the honour to serve the City some time," he added, "and know it very well; therefore I take the liberty to explain it to some of these gentlemen that are foreigners." He then went on to

outline what actually had happened when the Lord Mayor had adjourned the Common Hall and requested the people to disperse. "When my Lord Mayor came off the hustings, they came upon him, had him down upon his knees and his hat off, and if some gentlemen had not come in they had trod him under feet. Such an indignity was then done to the Lord Mayor of London, who, I think I may say, deserved as well from the government of this city as any gentleman that ever presided in that office."

Some lively exchanges followed between Jeffreys and the defendants' principal counsel, who was his old enemy Williams, Speaker of the House of Commons and Recorder of Chester. In the face of clear evidence that the rabble first hissed the Common Crier when he attempted to read the proclamation adjourning the meeting in the King's name and then assaulted the Lord Mayor, Williams tried to prove that the Mayor had actually taken off his hat to them of his own accord. "My Lord Mayor, I find," observed Jeffreys sarcastically, "was so extraordinary civil that to this rabble he must not only pull off his hat, but fling his hat on the ground to them."

One of the Crown witnesses, a man named Cartwright, who was in the Guildhall at the time of the disturbance, stated that he made an attempt to shield the Lord Mayor from his assailants, and that in so doing he wrenched his back and spat blood for six or seven days afterwards.

"Hark you, Mr Cartwright," said Jeffreys; "ever since that time have you found any indisposition?"

"I have not been my own man since," replied the witness.

"He took a surfeit," interjected Williams in a contemptuous tone.

"He took a surfeit of ill company, I am sure," was Jeffreys' effective retort.

The case against all the defendants was clear from the outset, and the jury had no hesitation in due course in finding them guilty. Grey, Shute, Cornish, and Bethel were each fined 1000 marks (£666 13s. 4d.), Pilkington, "by reason of his being a prisoner," only £500, and the others lesser sums.

A few days later the ex-Lord Mayor, Sir Patience Ward, appeared before the King's Bench in Westminster Hall to answer the charge of having given perjured testimony in the

case of *The Duke of York v. Pilkington*. Ward was defended by his friend Williams, while Jeffreys led for the Crown.¹

As usual, the defence tried to upset the proceedings with a preliminary objection. In the record of the action against Pilkington, which had to be produced at the present trial, the words "in the aforesaid year" were used in describing the false testimony, whereas in the actual charge against Ward the words appeared as "in the preceding year." It was a ridiculous technical quibble, and was quite properly overruled by Chief Justice Saunders. "If Sir Patience had been as exact in swearing as you are in observing," said Jeffreys to Williams, who made the objection, "he had done well enough."

It is unnecessary to describe this trial in detail, since the evidence was in the main a recapitulation of that given in the action against Pilkington. After five hours the jury retired, and eventually brought in the defendant guilty. There is, of course, no doubt that Ward had perjured himself and was rightly convicted. But as perjury ranked as a misdemeanour in the criminal code the defendant was not kept in custody, and apparently was bound only by his own recognizances to appear for sentence. He received a hint through a friendly source that his punishment would include the pillory, and, being naturally unwilling that an ex-Lord Mayor should gratify public curiosity as well as criminal justice in this manner, he discreetly withdrew to Holland and remained in hiding there until the excitement attending his trial had died down.² On his subsequent reappearance the Government authorities, who had already won their battle in the City, did not think it worth while to take any further steps against him.

The long-drawn-out *Quo Warranto* proceedings against the City for the forfeiture of its charter, which had been before the King's Bench Court for nearly eighteen months, were now approaching what had been from the first their foregone conclusion. When Sir Robert Sawyer, the Attorney-General, finally moved the court for judgment Lord Chief Justice Saunders was too ill to attend, but he sent a written judgment in favour of the King, which was read by the puisne judges, "that the liberties and franchises of the said city be delivered into the King's hands." A few days later the Lord Mayor,

¹ Howell, *State Trials*, ix, 299.

² Luttrell, i, 259.

Aldermen, and Common Council proceeded to Windsor, where they placed themselves and their ancient liberties in his Majesty's hands and acknowledged the error of their ways. All the Whig Aldermen and the Whig Recorder, Treby, were thereupon turned out, and other drastic changes took place in the municipal administration, which was now shorn of much of its pride and glory. "Eight of the richest and chief Aldermen were removed," wrote the diarist Evelyn at the time,

and all the rest made only justices of the peace, and no more wearing of gowns or chains of gold, the Lord Mayor and two Sheriffs holding their new places as Custodes at the King's pleasure. The pomp and grandeur of the most august city in the world thus changed face in a moment, which gave great occasion of discourse and thoughts of heart what all this would end in.¹

Or, as Jeffreys put it, the King of England at last became King of London.

VII

There now remained for the Crown the more difficult problem of dealing with the Whigs in the country apart from the City of London. The death of Shaftesbury at the beginning of the year had deprived the Whig party counsels of valuable and much-needed inspiration, but it had in no way checked the treasonable activities of certain other leaders. These individuals had, in fact, been plotting open rebellion and assassination of the King and his brother for some months, but they had been divided among themselves on the question of the best moment for action. The result was that their plans began to leak out and be talked of, and all that was needed was some trifling accident to reveal them to the Government authorities. It so happened that it was Jeffreys who was the first to discover the details, and it consequently fell to him to warn the King.

On June 23, 1683, Mr Robert West, a barrister of the Middle Temple, called upon Serjeant Jeffreys and made a statement to him about the Whig plot in which he admitted that he was himself concerned. The plans for an armed insurrection, said this informant, were directed by the Duke of Monmouth and the other leaders of the party, who included Lords Russell, Essex, Grey of Warke, and Howard of Escrick, Sir Thomas

¹ iii, 113; Luttrell, i, 261; Howell, *State Trials*, viii, 1039 *et seq.*

Armstrong, Colonel Algernon Sidney, and Mr John Hampden. The plan to assassinate the King and the Duke of York was to be carried out by a number of subordinate members of the party, who hoped to waylay the royal pair on their way from Newmarket to London. The scene of the proposed murder was the Rye House, near Hoddesdon, which belonged to one of the conspirators named Rumbold. But, luckily for the King and his brother, the Rye House Plot, as it was called, miscarried because an accident led them to change the day of their journey from Newmarket.¹

On hearing these details Jeffreys lost no time in dispatching West under guard to Hampton Court, where the Privy Council was in session. West was again examined thoroughly, and as a result of his information warrants were issued for the arrest of the Whig leaders and a host of their subordinates. Lord Howard of Escrick was discovered cowering miserably in the chimneypiece of his house in Kensington, and on being taken into custody agreed to disclose everything he knew on condition that his life was spared. Russell, Essex, Sidney, Hampden, and others were apprehended and sent to the Tower. Among the leaders only Monmouth, Armstrong, and Grey succeeded in getting away to the Continent.

The licentious Grey had the most fortunate escape to Holland, whither he was accompanied in the same vessel by his sister-in-law and quondam mistress, Lady Henrietta Berkeley, and the luckless Mr Turner, her husband. He was actually arrested and dispatched to the Tower with a messenger guard. When they arrived at the gates it was too late to gain admittance, and they retired for the night to the messenger's house near by, where the prisoner plied his guard with wine and made him dead drunk. When he rose next morning the messenger was still asleep, so Grey "called for a pair of oars, and went away leaving the drunken messenger fast asleep." Thence he made his way in disguise to Chichester harbour, where he procured a ship to take him and the others to Flanders.²

¹ Luttrell, i, 262.

² *Ibid.*, 265; Burnet, ii, 359. An interesting account of this escape and the subsequent activities of Grey and the other exiles in Holland was given to the Secretary of State, Sir Leoline Jenkins, by Ezekiel Everest, a custom-house officer of Chichester, who, having helped Grey to escape and accompanied him on board, had on promise of a pardon returned to England and turned King's evidence (*C.S.P. (Dom.)*, 1683-84, p. 222 (*S.P., Dom.*, Car. II, 436, No. 53)).

Lord Russell was the first of the Whig leaders to suffer. He belonged to an aristocratic house, being the eldest son of the Earl (later first Duke) of Bedford. He had been the leader of the Whigs in the House of Commons, where, it will be remembered, he had once denounced Jeffreys as a criminal. He had been the principal supporter in the Lower House of the Bill to exclude the Duke of York from the succession, and had also been particularly ardent in pushing forward the Popish Plot prosecutions. That he concerted with Shaftesbury and the others plans for a general insurrection there can be no doubt, as also that he associated with would-be murderers, if he did not actually countenance their designs. He was tried for high treason at the Old Bailey on July 13, immediately after the conviction of two of the Rye House plotters named Hone and Walcot. Chief Justice Pemberton presided on the bench, and the Crown was represented by the two Law Officers, Sawyer and Finch, as well as by Jeffreys and young Roger North.¹

The witnesses for the prosecution were Lord Howard of Escrick and two other Rye House plotters—Rumsey, an old Cromwellian soldier, and Sheppard, a wine-merchant, who had both turned King's evidence. Although they were all accomplices (and as such their evidence must be regarded with caution), it does not appear that they concocted their story, as Oates and his associates had done in the Popish Plot trials, for the purpose of incriminating the prisoner. As Jeffreys told the jury in his closing speech for the prosecution, "we rake no gaols, nor bring any profligate persons, persons that wanted faith or credit before this time." Indeed, Russell had every possible consideration shown him. His defence was extremely weak and hesitating, his witnesses spoke mostly as to his character, and he made no attempt at a categorical denial of the charge of levying war against the King. His admission that he had been to Sheppard's house ostensibly for the purpose of tasting sherry was fatal, since it was proved that treason was discussed on that occasion and that Russell had joined in the discussion. His defence in law really rested on the argument that a conspiracy to levy such a war as the conspirators contemplated was not equivalent to a design to kill the King. Pemberton in his summing up certainly stretched

¹ Howell, *State Trials*, ix, 577.

the law relating to treason in favour of the prisoner when he directed the jury that this argument was a good defence unless the war to be levied was of such a nature as to expose the King to personal danger.

During the trial a dramatic incident occurred which was utilized by Jeffreys to prejudice the jury against the prisoner. Shortly after beginning his evidence Lord Howard of Escrick showed signs of breaking down, and he excused himself by saying that he was "but just now acquainted with the fate of my lord of Essex." The truth was that Essex, who was a close friend of Russell's, had committed suicide in the Tower by cutting his throat; and the story got about that he had taken his own life out of a sense of mixed shame and guilt for his complicity in the plot.

The fact of Essex's death had, however, not been legally proved in court, so that Jeffreys did wrong in alluding to it in his final speech, since his remarks cannot have been lost upon the jury. The prisoner, said Jeffreys, had submitted the inconceivability of Rumsey, a man who had received so many marks of the King's favour, "contriving such a hellish design" as the death of his monarch. "Gentlemen," Jeffreys went on, "if you will argue from such uncertain conjectures, then all criminals will come off. Who should think that my lord of Essex, who had been advanced so much in his estate and honour, should be guilty of such desperate things! Which had he not been conscious of, he would scarcely have brought himself to that untimely end to avoid the methods of public justice."

In these circumstances the jury had no difficulty about finding the prisoner guilty, and he was in due course condemned to death. His father, the Earl of Bedford, made every conceivable effort to save him, and is said to have offered the King through the Duchess of Portsmouth £100,000 for a reprieve. The most Charles would do was to substitute beheading for drawing, hanging, and quartering. A week after his trial Lord Russell was decapitated in Lincoln's Inn Fields, where, according to the observer Luttrell, "Ketch the executioner severed his head from his body at three strokes, very barbarously." ¹

¹ Burnet, ii, 339 *et seq.*; Luttrell, i, 271.

LORD CHIEF JUSTICE

THE trial of Lord Russell in the summer of 1683 was the last trial of any importance in which Jeffreys figured as an advocate. During the following Long Vacation King Charles took a step which he had been considering ever since Saunders had died in June from "the palsy, stone, and a complication of other distempers." He decided to fill the vacant place in the Court of King's Bench by elevating Serjeant Jeffreys to the bench. But it was an appointment which he did not make without considerable hesitation and an apparent sense of misgiving. When Saunders first became seriously ill in the spring of this year the clever and volatile Lord Sunderland, who had rejoined the Tories and returned to his old office of Secretary of State, which he had previously held as a Whig, spoke to the King warmly recommending Jeffreys as the sick judge's successor in the Chief Justiceship. On that occasion, as Sunderland told his friend and Ministerial colleague Rochester, he found Charles "very much unresolved and full of objections against him, as that all the judges would be unsatisfied if he were so advanced, and that he had not law enough." Charles was reported, on the somewhat dubious authority of Titus Oates, to have gone even further than this and declared that Jeffreys had "neither learning, law, nor good manners, but more impudence than ten carted whores." Still, after all, Jeffreys had discovered the first information about the Rye House Plot, and his vigorous conduct of the prosecution in Lord Russell's trial, as contrasted with what the King considered undue favour shown to the prisoner by Pemberton from the bench, seemed to indicate Jeffreys as the obvious choice. At all events, Charles now determined to cast his doubts to the winds. Sir George Jeffreys accordingly kissed hands on his appointment as Lord Chief Justice of the Court of King's Bench on September 28, 1683. A few days later he was sworn a member of the Privy Council and took his seat at the board. Thus at the remarkably early age of thirty-eight he found himself not only the holder of

the second judicial office in the realm, but also what amounted to being a member of the Government at the same time.¹

In the council chamber the new Lord Chief Justice was not the youngest. Sidney Godolphin, a gambler but a clever financier, who was shortly to supplant the sixty-year-old Sir Leoline Jenkins as Secretary of State, was actually a month younger than Jeffreys. Moreover, the First Lord of the Treasury, Laurence Hyde, Earl of Rochester, was only forty-two, while Jeffreys' particular friend and supporter, Robert Spencer, Earl of Sunderland, was but a year older than Rochester. But Jeffreys was easily the youngest member of the bench, where he took his seat in the scarlet and ermine robes of Lord Chief Justice at the beginning of the Michaelmas term. His appearance in this exalted position, coupled with his established place in the councils of State, spread dismay in the Whig ranks, as well it might, for it was thought that as a judge he would not forget the partiality which he had shown as Crown counsel in political trials. As the Whig Bishop Burnet wrote, "all people were apprehensive of very black designs when they saw Jeffreys made Lord Chief Justice, who was scandalously vicious and was drunk every day, besides a drunkenness of fury in his temper that looked like enthusiasm." Although he was admittedly a heavy drinker, it must not be assumed from this that he appeared on the bench drunk, as Burnet would have us believe. It was a particularly hard-drinking age, and the Tory judges certainly did not enjoy a monopoly of the bottle. Sir George Treby, the Whig Recorder of London, was, if anything, more intemperate than his predecessor in office; nevertheless, his failing is overlooked by Burnet, at whose hands he appears a most respectable judge. But of Jeffreys' intoxication of temper and partiality on the bench there can be no question. Even the Tory Lord Keeper Guilford viewed his promotion with misgiving on this account, while the Royalist John Evelyn noted the general opinion of the change when he said that Jeffreys at the time of his advancement "was reputed to be most ignorant, but most daring." Soon afterwards the diarist confirmed this opinion with the observation that the Lord Chief Justice was "of an

¹ Luttrell, i, 262, 281, 283; S. W. Singer, *Clarendon Correspondence* (1828), i, 83; Muddiman, p. 151.

assured and undaunted spirit, and has served the Court interest on all the hardest occasions; is of nature cruel and a slave of the Court.”¹

In Wales, however, Jeffreys had many friends and connexions who made haste to congratulate him. His brothers were, of course, delighted—particularly Thomas, who was in the consular service, and James, in the Church—for they hoped that the brilliant and successful George might be able to advance their fortunes farther. Among those who wrote to him from Wales at this time was William Lloyd, Bishop of St Asaph, who addressed him as “my most honoured friend,” from which it appears that Jeffreys’ influence had probably helped to obtain him his bishopric. Two other facts of interest appear from this letter: first, that Jeffreys’ acceptance of the Chief Justiceship involved a sacrifice in his professional income, and, secondly, that his health was not good. The symptoms of that painful malady the stone had already begun to make themselves felt in his system, and they must be held in some measure responsible for those fits of irritability and outbursts of temper which his contemporaries were beginning to notice in him. “When I heard of your promotion,” wrote the Bishop,

though I could not but rejoice at it for the public good, yet I knew it was so little to your private advantage that I could not think it a proper matter for congratulation. Otherwise you would have heard from me a great deal sooner. For I do truly rejoice in your prosperity, and I heartily pray for your long life and better health than you have had of late years. And as far as your remove may contribute to this, so far I do, and shall always most heartily congratulate you in it.²

We shall see, however, that the Bishop did not remain permanently of this opinion.

Jeffreys’ promotion involved a number of other legal changes. The Chief Justiceship of Chester, which he now relinquished, went to Sir Edward Herbert, an honest but weak lawyer, while the able but rather priggish young Roger North became Solicitor-General to the Duke of York. Chief Justice Pemberton was removed from the Court of Common Pleas as a punishment

¹ Burnet, ii, 389; Evelyn, iii, 113, 188.

² Jeffreys MSS. See also *Home Counties Magazine*, March-June 1910, where this and other personal letters are reproduced in an interesting article by W. H. Wadham Powell (“Letters and Notes relating to the Family of George, Lord Jeffreys, Baron of Wem, 1684-89”).

for his supposed lukewarmness in dealing with the Rye House plotters, and for the second time in his career he resumed his practice at the Bar. His place was taken by Sir Thomas Jones, a septuagenarian, who was transferred from the King's Bench, and who was, like Jeffreys, a Welshman and an old Salopian. He was also a strong upholder of the royal prerogative; but, unlike the Lord Chief Justice, he was now more than past his prime, having sat beside Jeffreys' father as an alderman on Shrewsbury borough council more than fifty years before. Of the puisne judges in the King's Bench, Sir Francis Wythens, who had been appointed on Dolben's dismissal earlier in the year, kept his place; he had the reputation of being a drunkard and a voluptuary, and he shared with Jeffreys the somewhat doubtful distinction of having been reprimanded on his knees in the House of Commons for the crime of 'abhorring.' The two other King's Bench puisnes appointed at this time, Sir Richard Holloway and Sir Thomas Walcot, were more or less nonentities. Holloway, a native of Oxford, had first attracted the public eye through being briefed as one of the Crown counsel for the prosecution of Colledge, the "Protestant joiner," who was tried in that town—otherwise he was completely inconspicuous. The equally inconspicuous Walcot probably owed his elevation to the Chief Justice's influence: he was a Salopian who had practised in the Welsh courts, and during his subsequent two years on the bench he is said to have made not a single remark "indicative of his character or talents."

Bishop Burnet wrote that the new Lord Chief Justice "had three judges joined with him in the King's Bench fit to sit by him." The truth, of course, is otherwise. None of them could be compared with Jeffreys in powers of advocacy, intellectual calibre, and even knowledge of the law, in which their chief has so often been accused of lamentable deficiency. Jeffreys had a poor enough opinion of them, which he made no attempt to conceal as time went on. They scarcely ever opened their mouths when they accompanied him on the bench, except to pronounce the judgments on which he had decided; but, apart from this duty, they really need not have troubled to appear at all, since counsel habitually addressed the court as "your lordship." Jeffreys dominated the court from the outset, as, indeed, he dominated every gathering at which he was

present. His friend the Bishop of St Asaph gave him pertinent advice when he wrote, "I must beseech your lordship to put life in the secular arm." Jeffreys infused his court with an unaccustomed vitality. Counsel were told in no uncertain language to stick to the facts, and not to "prate impertinently," nor indulge in florid opening speeches designed to sway the jury at the beginning of the case. "We must not have our time taken up with impertinent things." He could not abide what he called "flourishes" or "garniture" at any time. "None of your fragrances and fine rhetorical flowers to take the people with," as he said to one member of the Bar. Nor did he mind whom he rebuked—whether counsel for the King or the defence, he did it with an equally heavy hand. "We have got such strange notions nowadays," he observed in one of his early cases on the bench, "that forsooth men think they may say anything because they are counsel." He even went so far as to mortify one of his judicial brethren who had the misfortune to be subpoenaed as a witness in a civil case which he tried.

But for all his browbeating and hectoring as Lord Chief Justice Jeffreys brought to bear in the King's Bench an abundance of common sense, characteristic humour, and knowledge of human nature which must have been most refreshing to all save those who fell immediately beneath the lash of his tongue. Whenever he spoke his remarks were always to the point, and no one could ever say that the proceedings in his court were dull. The best witnesses to his knowledge of the law are his recorded judgments, and to these some further reference is made in the following pages. For the present it is well to set the opinion of Roger North against the well-known strictures of Burnet and the other Whig writers of the Revolution on the subject of Jeffreys' legal ignorance. North disliked Jeffreys on personal grounds, because he was always trying to thwart his virtuous brother, the Lord Keeper; but, as Jeffreys' professional contemporary and himself a person of no mean attainments, North was obliged to admit the undoubted talents of the Chief Justice in the judicial sphere. "When he was in temper and matters indifferent came before him," wrote North, "he became his seat of justice better than any other I saw in his place."¹

¹ *Lives*, i, 288.

II

On October 13, 1683, Secretary Jenkins wrote to his colleague Sunderland, "All is quiet in the City. The new justices have their commissions past the Seal this night, and they will attend the Lord Mayor to-morrow in their gowns at church." Ten days after this picturesque ceremony the Michaelmas term began, and the new Lord Chief Justice lost no time in setting to work in the King's Bench. One of his first reported judgments was the very proper one in *Neale and his wife v. Mallard*, which was an action for slander. Speaking of the plaintiff's wife, the defendant in this action was alleged to have said, "I have lain with her and pockified her." Jeffreys ruled that these words were defamatory and consequently actionable. Among the first to be brought before him on the criminal side was a solicitor named Aaron Smith, who had previously been convicted of supplying Stephen Colledge with seditious papers before his trial at Oxford, "full of scandalous reflections upon the King and Government, as that they might as well have hanged him at Tyburn as he came by as brought him thither only to murder him in a little more formality." Smith was now up for sentence, and Jeffreys gave the necessary directions. He was fined £500 and had to stand in the pillory twice. As soon as this sentence had been pronounced the prisoner looked at the Chief Justice. "I thank God for this judgment," he said; "His will be done. But I wonder you did not order me on the pillory till doomsday." Jeffreys' comment on this piece of effrontery has not been recorded.¹

The first fortnight of the term was principally devoted to the many individuals in custody on the charge of complicity in the recent Rye House Plot. These men were now brought before the King's Bench for immediate trial or bail in lieu. Of these the first to be tried was Colonel Algernon Sidney, who came before the court on November 7, when he was asked to plead to the indictment. Sidney, who was a younger brother of the Earl of Leicester and an uncle of the Secretary of State Lord Sunderland, had devoted the greater part of his sixty years to the republican cause. During the Civil War he fought for

¹ *C.S.P. (Dom.)*, 1683-84, p. 34; Luttrell, i, 285; Skinner, *Reports* (1681-87), p. 124; Sir Bartholomew Shower, *Reports* (1720), ii, 312.

Parliament, and was severely wounded at the battle of Marston Moor. He was one of the commissioners appointed to try Charles I, but he declined to sit at the actual trial, nor did he sign the King's death-warrant. He was abroad at the time of the Restoration, and for the next seventeen years he remained on the Continent, trying without success to induce Louis XIV to finance another rebellion in England. However, he eventually made his peace with Charles II, and was allowed to return to his own country in 1677. But he naturally found himself unable to stand aloof from politics, and was soon numbered among the Whig leaders. After Shaftesbury's death he became, along with Russell, Essex, Grey, Howard, and Hampden, one of the so-called "Council of Six," who discussed and hoped to carry through an insurrection. His pugnacious character and quick temper did not, however, go to make him an ideal conspirator.¹

On being summoned to the bar in Westminster Hall and having the indictment read over to him he was asked the usual question whether he was guilty or not guilty of the crime of high treason with which he was charged. To this question he at first refused to give a direct answer. He had with him a special plea properly drawn up on parchment and objecting to the indictment. He kept offering it to the judges, and then withdrawing it when the danger of this course was explained to him. As the law then stood, if the prisoner put in his special plea he was allowed counsel to submit the legal arguments in support; but if the special plea was overruled by the bench then his position was the same as if he had pleaded guilty. "Put in what plea you shall be advised," said Jeffreys to him, "but if you put in a special plea and Mr Attorney demurs you may have judgment of death, and by that you waive the fact." The Whig barrister and Speaker of the House of Commons, Williams, happened to be standing beside the prisoner at the bar, and he was seen whispering to him. Jeffreys rebuked him sternly. "I only said, if it was a plea put it in," said Williams. "Mr Attorney can hear all I say." Further argument ensued between the prisoner and the bench. At last Jeffreys got angry. "You must plead as other people, or else, in plain English, we will pronounce sentence." Sidney

¹ Howell, *State Trials*, ix, 817.

protested in vain. He had to plead in the end, and he pleaded not guilty.

The trial took place a fortnight later. At the outset the Lord Chief Justice informed the jury that counsel were apt to whisper to them. If such a thing happened they were to inform the court immediately. "Let us have no remarks," added Jeffreys, "but a fair trial, in God's name."

After the Attorney-General had opened the case for the Crown he began by calling evidence to establish the existence of a general conspiracy. Sidney vehemently protested that the witness, who was the informing barrister West, should only testify to facts concerning himself. Jeffreys met this objection by pointing out that in all the Popish Plot trials a general account of the plot was first given, and quoted the Whig Attorney-General, Sir William Jones, who prosecuted in these trials, as an authority for the practice. "I tell you all this evidence does not affect you," said Jeffreys, "and I tell the jury so." "But it prepossesses the jury," retorted the prisoner, with some truth.

Sidney was indicted for compassing and imagining the King's death, and three overt acts were charged as displaying his traitorous intention—first, holding consultations amounting to a conspiracy to levy war; secondly, sending Aaron Smith to Scotland to concert with the Earl of Argyll and other Scotsmen plans for an insurrection; and, thirdly, composing a treasonable libel in the shape of a manuscript found in his study in which he asserted, among other things, that the King was subject to Parliament and that "we may therefore change or take away kings."

Lord Howard was the first direct witness of the treason, and he proved the first and second overt acts. He seems to have sworn truthfully, since he repeated much of the evidence he had given in the trial of Lord Russell, and the passages about Scotland were subsequently corroborated. Furthermore, the prisoner made no attempt to contradict him, and, in fact, declined to ask him any questions at all. "Silence . . ." observed the Attorney-General ominously to the jury. "You know the proverb."

The prosecution got over the difficulty of the second direct witness necessary to convict for treason by making this the

manuscript which had been found in Sidney's study. It was an answer to Sir Robert Filmer's Royalist book *Patriarcha*, and was designed to justify in certain circumstances rebellion against royal authority and even the deposition of the monarch. The incriminating work was clearly proved by three witnesses to be in Sidney's handwriting. Sidney protested that the work was a legitimate answer to Filmer's doctrines. "I don't know what the book was in answer to," said Jeffreys to the prisoner. "We are not to speak of any book that Sir Robert Filmer wrote, but you are to make your defence touching a book that was found in your study; and spend not your time and the court's time in that which serves to no other purpose than to gratify a luxuriant way of talking you have. We have nothing to do with his book. You had as good tell me again that there was a parcel of people rambling about pretending to be my Lord Russell's ghost, and so we may answer all the comedies in England."

Sidney then urged that the book had not been published, and that it was a right of mankind to set down what they pleased in their closets, for which they should not be answerable except on publication.

"Pray do not go away with that right of mankind that it is lawful for me to write what I will in my closet unless I publish it," Jeffreys warned him. "I have been told, 'Curse not the King, not in thy thoughts, not in thy bedchamber; the birds of the air will carry it.' I took it to be the duty of mankind to observe that."

Sidney remonstrated, but Jeffreys cut him short.

"I have lived under the Inquisition——"

"God be thanked we are governed by law!"

"I have lived under the Inquisition," Sidney continued, "and there is no man in Spain can be tried for heresy——"

"Draw no precedents from the Inquisition here, I beseech you," interrupted Justice Wythens.

"We must not endure men to talk," added Jeffreys, "that by the right of nature every man may contrive mischief in his own chamber, and he is not to be punished till he thinks fit to be called to it."

There is no doubt that Jeffreys strained the law to the detriment of the prisoner in holding, as he did, that the writing

and possession of the treasonable manuscript were tantamount to an overt act of treason. The Whig lawyers and writers of a later date declared that this interpretation of the law was wrong; but, having regard to the state of the law at this period, it is, on the other hand, by no means certain that they were altogether correct. Earlier in the same reign a man had been executed for printing a book much to the same effect as Sidney's work. Assuming that Sidney intended to publish the manuscript, as Jeffreys did assume, then possession might well be held to amount to an overt act of conspiracy to levy war against the King, which in itself, as we have seen from Russell's trial, might be a treasonable act. Such is the opinion of the late Sir James Stephen, the historian of our criminal law, and there is much to be said in support of it.¹

On the facts, of course, there is no doubt that Sidney had a fair trial. He made little attempt to defend himself, apart from raising various technical points relating to the indictment, points whose importance he decidedly overrated; and his witnesses spoke mainly as to character. When he came to sum up to the jury Jeffreys used quite temperate language; and, although he summed up as a whole against the prisoner, his words cannot be described as unfair. "It is a cause of great concernment," he said, "and it is far from the thoughts of the King or any of his judges here to be instrumental to take away the life of any man that by law his life ought not to be taken away. For I had rather many guilty men should escape than one innocent man suffer."

The jury retired about six o'clock in the evening, and after about half an hour's interval returned to say that they found the prisoner guilty. Five days later he was brought to the bar to receive sentence of death. An angry altercation between him and the bench followed upon the customary question whether he had anything to say why judgment should not be given. "I have had no trial at all," he said, "and if I have had no trial there can be no judgment."

Jeffreys heard him with patience, but naturally declined to grant him a new trial as he demanded. "It is a strange thing," said the Judge, addressing the prisoner, "you seem to appeal as if you had some great hardship upon you. I am sure I can

¹ i, 410.

appeal as well as you. I am sure you had all the favour showed you that ever any prisoner had. The court heard you with patience when you spake what was proper; but if you begin to arraign the justice of the nation it concerns the justice of the nation to prevent you. We are bound by our consciences and our oaths to see right done to you; and, although we are judges upon earth, we are accountable to the Judge of heaven and earth; and we act according to our consciences, though we do not act according to your opinion."

After some further wrangling Jeffreys proceeded to pass sentence—drawing, hanging, and quartering—concluding with the customary words, "And the God of infinite mercy have mercy on your soul!"

"Then, O God!" exclaimed Sidney, "O God! I beseech Thee to sanctify these sufferings unto me, and impute not my blood to the country, nor the city through which I am to be drawn. Let no inquisition be made upon it, but if any, and the shedding of blood that is innocent must be revenged, let the weight of it fall only upon those that maliciously persecute me for righteousness' sake."

"I pray God to work in you a temper fit to go unto the other world," Jeffreys observed upon this outburst, "for I see you are not fit for this."

The prisoner started forward, holding out his hand. Then he spoke.

"My lord, feel my pulse and see if I am disordered. I bless God I never was in better temper than I am now."

Before he could say anything more the gaoler seized the prisoner, and he was taken back to the Tower. Here he sat down and wrote out a petition to the King begging for an interview. But Charles would only grant him the same favour as he had to Russell—beheading instead of disembowelling and hanging. And so it happened. He was executed on Tower Hill on December 7. Shortly before his execution he had been urged by his friends to beg the King that his body might be given them for burial, but he scornfully declined to trouble the King further. "He may make a snuff-box of my arse, if he pleaseth," was his somewhat inelegant comment.¹ He also had a hit at Jeffreys in a paper which he gave to the Sheriff

¹ Luttrell, i, 293; North, *Examen*, p. 411.

when he was on the scaffold. "Lest the means of destroying the best Protestants in England should fail," he wrote in this apologia, "the bench must be filled with such as had been blemishes to the Bar." However, he fared better than his friend Russell at the executioner's hands, for it is reported that his head was struck off at one blow.¹

On the following day Jeffreys and his brother judge Wythens attended a City wedding. The bride was a certain Mrs Castle, the daughter of a self-made broom manufacturer who had become rich, and she was marrying as her fifth husband a lieutenant-colonel in one of the City regiments. There was a great gathering at the reception, and many of the City notabilities were present, including the Lord Mayor and several Aldermen, while Mr John Evelyn came over from his house in Deptford. The diarist noted with a touch of disapproval that the two judges danced with the bride and were exceeding merry. "These great men," added Evelyn, "spent the rest of the afternoon till eleven at night in drinking, taking healths, and talking much beneath the gravity of judges who had but a day or two before condemned Mr Algernon Sidney."²

III

The year 1684 opened with one of the severest frosts on record in London. The Thames was completely frozen over, and Jeffreys was able to make the journey from the City to the courts at Westminster on the ice. The frost lasted six weeks, and provided a remarkable spectacle. "All this term," noted Luttrell, when the thaw began in February,

persons have gone by foot and coach to Westminster, above fifty coaches plying on the Thames; I myself went in one. There were whole streets of booths built in several places, but the most against the Temple Stairs, and most sorts of trades shops there; nay, below the bridge were several booths, and persons went through some of the arches of London bridge on the ice. Carts went commonly on; there were three or four printing houses; a whole ox was roasted on the ice before Whitehall, and a fox trailed along with dogs after the same day; there were multitudes of persons passing on it, and infinite sorts of sports and diversions used daily thereon. This frost was so severe that the harbours of several

¹ Luttrell, i, 293; North, *Examen*, p. 411.

² iii, 117.

places were frozen up that no ship could go out or come in: no packet boats went out: the sea was frozen some miles out from the shore; vast flakes of ice of several miles were seen floating in the sea; nay, divers ships were so beset with ice that they could not sail backward or forward, but driven to great distress.¹

The next victim of the Whig plot was John Hampden, grandson of the John Hampden of ship-money fame. He had completed his education in France only a few years previously, and on his return to England he had, in spite of his youth, become one of the "Council of Six" Whig leaders. He had been arrested along with Russell, Essex, and Sidney, and the Government wished to indict him for high treason. The trouble was that only one witness could be found to swear against him, the inevitable Lord Howard of Escrick; and, unlike Sidney, he had committed no treasonable words to paper which might be used in lieu of a second living witness. The authorities therefore decided to prosecute him for misdemeanour, when only one witness was required to secure a conviction. He was brought before the King's Bench to answer this charge on February 6, 1684.²

Since it was a case of misdemeanour Hampden was allowed counsel to defend him. He chose them from the ranks of his own party—Williams and a choleric seventy-year-old barrister named Wallop, who, like Williams, was continually running up against Jeffreys and rousing him to anger. Williams and Wallop were not alone among members of the Bar in cordially detesting the new Lord Chief Justice, and they let it be known that they were by no means out of sympathy with the late Algernon Sidney's strictures on the recent appointments. That Jeffreys was sensible of this feeling there is no doubt from some remarks he made at the beginning of Hampden's trial in answer to a preliminary objection taken by Williams on the constitution of the jury. "I am very glad that we are now to debate this matter with men of the robe," he said, "because we have had a strange sort of notions and reflections spread abroad of late, as though the judges nowadays gave strange sorts of opinions, and as though persons that had been blemishes at the Bar were preferred to do strange things when they came upon the bench."

¹ i, 297.

² Howell, *State Trials*, ix, 1053.

For the Crown Lord Howard repeated the evidence he had given in the trials of Russell and Sidney, proving Hampden's active participation in the insurrectionary schemes of the Council of Six: in fact, their first meeting was said to have been in Hampden's house in Bloomsbury. The defence attacked Howard's credibility, and also tried to upset his credit until checked by the bench. "May it not be believable," said Williams in his opening, "that what he hath said he hath said only for his own sake, and that he has by exposing this gentleman [Hampden] and the blood of others, procured himself a pardon?"

LORD CHIEF JUSTICE. What do you mean by that, Mr Williams?

MR WILLIAMS. By being a witness against the defendant and others he has procured his own pardon.

LORD CHIEF JUSTICE. That is a little harsh expression.

MR WILLIAMS. I explain myself thus——

LORD CHIEF JUSTICE. It is a harsh word and too roundly expressed. You had need to explain yourself. It is a little too rank, as though the King's pardon were to be procured by blood.

The indefatigable Williams was in constant conflict with the bench throughout this trial, and it is clear that right was not invariably on his side. For instance, he proposed to call a witness to say that the prisoner and the late Lord Essex had a very poor opinion of the Crown's principal witness. In the case of Essex, of course, this was not evidence, and Jeffreys was quick to point it out.

MR WILLIAMS. It is a sort of evidence.

LORD CHIEF JUSTICE. Ay, it is a sort of evidence, but it is not to be allowed. If you will prove Mr Hampden's opinion you may, but you must not for him bring proof of what my Lord of Essex, a third person, thought of my Lord Howard.

MR WILLIAMS. I only offer it thus——

LORD CHIEF JUSTICE. Offer what is evidence, man! You are a practiser and know what is evidence, but you have offered two or more things to-day that I know you do at the same time know is not evidence, and I speak it that it may not be thought we deny you or your client anything that is according to the course of law.

The Lord Chief Justice also checked a similar attempt on the part of Williams to disparage Howard's character by showing his "opinion of the world to come and rewards and punishments there." "We must be tender of men's reputations,"

Jeffreys observed, "and not let everything come as evidence when it is not fit to be evidence, to put slurs and scandals upon men that they cannot be prepared to wipe off. Is he convicted of any crime? If he is, you say something—show the record of it." But when Howard expressed the desire to lay hands on the rascal whom it was proposed to call as a witness against him in this manner he was peremptorily told to compose himself. "My lord," said Jeffreys, addressing him, "do you think that everything that a man speaks at the Bar for his client and his fee is therefore to be believed because he said it? No! The jury are to take nothing here for evidence to guide them of what counsel say but what is proved."

As counsel on each side waived the right to make a closing speech, Jeffreys summed up at considerable length. Though not free from political bias, his speech was on the whole moderate. He put it bluntly to the jury that they must either accept Lord Howard's evidence against the prisoner or else consider him guilty of perjury, and he met the objection that Howard was an accomplice by pointing out that in crimes of treason it was virtually impossible to secure any other kind of witness for the Crown. Hampden was found guilty, and fined £40,000, with an order to be committed to prison until the sum be paid. "No doubt if you give an account of your contrition and sorrow for your great offence," said Jeffreys to him, "and decently apply yourself to the King, he will think of showing mercy to you." Such a sum was quite beyond his means, and he offered the King a lesser amount. But he does not appear to have been sufficiently contrite, for, according to his own story, the authorities answered him "that they had rather have him rot in prison than that he should pay the fine."¹

The name of Lord Essex, as one of the Whig Council of Six, had been mentioned in this trial and also in the trial of Russell, when, it will be remembered, the news of his suicide in the Tower was commented upon effectively both by Lord Howard of Escrick and Jeffreys. On the day after Hampden's trial this unhappy incident was debated in the King's Bench. On this occasion a barrister named Laurence Braddon and a member of a good West Country family, Hugh Speke, were charged with

¹ Howell, *State Trials*, ix, 961.

circulating a false rumour to the effect that Essex had not taken his own life at all, but had been murdered. At the time of Essex's death the King and the Duke of York were actually within the precincts of the Tower engaged on a round of inspection, and it was suggested that the royal brothers had instigated the crime. Braddon and Speke had not themselves been in the Tower at the time, but Braddon produced two children who had been playing in one of the courtyards to say that they had seen a bloodstained razor thrown out of an upper window which they knew to belong to the chamber in which Essex was confined.

According to the dead peer's servant, who was within earshot at the time of his death, Essex was discovered lying with his throat cut in the little closet which served to relieve the needs of nature. Beside him on the floor was a razor with which the deed had been done, and which he had only a short time before procured from his servant for the ostensible purpose of cutting his nails. There is no good reason for supposing that he met his end in any other way than by his own hand. The theory of suicide, which was accepted by his family, was supported by his known melancholy disposition, his sleeplessness in the Tower, the danger in which he knew his friends to be, and the fact that he found himself in the very room in the Tower from which his father, a noted Cavalier, had been led to execution—a fact which was supposed to have particularly preyed upon his mind. "My Lord Essex might have tried my mercy," Charles is reported to have said. "I owe a life to his family." Furthermore, no adequate motive has ever been advanced to support the theory that the Earl was murdered.

The defendant Braddon had taken down a statement in writing from the two children—a boy of thirteen named Edwards and a girl named Lodeman—to the effect that they had seen the razor thrown out of the window. The Crown began by calling Edwards's father to prove that his son was a liar, and then called the boy himself. He had to be lifted up on to the table before the bench, so that he could be seen by the judges. Jeffreys eyed him fiercely.

"If you should tell a lie do you know what will become of you?" he asked the child.

"I should go to hell-fire."

"That is a terrible thing," observed the Chief Justice. "And therefore, child, if you take an oath be sure you say nothing but what is truth, for no party, nor side, nor anything in the world; for that God that you say will call you to an account and cast you into hell-fire if you tell a lie and witness to a falsehood knows and sees all you do; therefore have a care—the truth you must say, and nothing but the truth."

Under this awful admonition Master Edwards admitted that his story of the razor being thrown out of the window in the Tower was a complete fabrication, and that he had only signed the statement which Braddon had taken from him because he thought there was no harm in it.

The girl Lodeman, on the other hand, stuck to her story; but none of the other children who were playing in the Tower could be found to corroborate it. On the contrary, it was proved that had the razor in fact been thrown out of the window of Essex's chamber it would not have fallen in that part of the building where the children were.

The defence simply rested their case on the signed statements of the two children. "Pray, good sir," said Jeffreys to Braddon, "how came you to be a Justice of the Peace and to turn examiner? You live in the Temple and belong to the Temple. How came you to take examinations here in the City but that some people are so very zealous and officious in matters that concern them not, on purpose to raise a dust?"

Braddon was unable to reply, so Jeffreys proceeded to castigate his counsel for suggesting that the boy Edwards had retracted his original statement under the threat that otherwise his father would be hanged.

LORD CHIEF JUSTICE. Nay, Mr Wallop, be as angry as you will, you shall not hector the court out of their understandings. We see plainly enough whither that question tends. You that are gentlemen of the robe should carry yourselves with greater respect to the Government, and while you do so the court will carry themselves as becomes them to you.

MR WALLOP. I refer myself to all that hear me if I attempted any such thing as to hector the court.

LORD CHIEF JUSTICE. Refer yourself to all that hear you? Refer yourself to the court. It is a reflection upon the Government, I tell you your question is; and you shall not do any such thing while I sit here, by the grace of God, if I can help it.

MR WALLOP. I am sorry for that. I never intended any such thing, my lord.

LORD CHIEF JUSTICE. Pray behave yourself as you ought, Mr Wallop. You must not think to huff and swagger here.

And so it went on. Jeffreys laid about him in great style, putting counsel, witnesses, and defendants in their places. There was one over-voluble woman witness who persisted in giving a lot of hearsay evidence, and could not understand why her testimony should be rejected, because, as she kept pointing out, she was telling the truth. Jeffreys had considerable difficulty in stopping her, but at last he succeeded with a delightful remark: "Nay, prithee, mistress, be not so full of tattle, so full of clack." Thereupon this loquacious lady subsided, and no more was heard of her for the rest of the trial.

Speke had given Braddon a letter of introduction for use in Hampshire and Wiltshire, where, it was alleged, the Government had deliberately spread the rumour of Essex's suicide in order to conceal the truth of the murder. Speke pleaded that he was drunk at the time he wrote the letter, and this may have been so. At all events, Jeffreys decided to treat him as the tool of the other, though he warned him seriously of the consequences of his folly. "You are a man of quality, Mr Speke, I know," he said to him. "I should be glad you were innocent with all my heart. But when men forget their studies and their own business and take upon them the politics without being called to it, that puts them into frenzies, and then they take all opportunities of showing themselves men of zeal."

In his summing up Jeffreys practically directed the jury to convict, but he pointed out that there was no evidence to show that Speke had been anything more than an accessory. The accused were, of course, found guilty. Braddon was fined £2000 and Speke £1000. Jeffreys hoped that his penalty would prove a salutary lesson to others who might be minded to spread false rumours to the detriment of the Government—particularly those Whigs whom his eagle eye could not fail to detect in court. "I can see a great many of the party about you," he said, looking at Braddon. "I can spy them out, though they think they are not seen; but they shall know we

will not suffer such monsters as these to go without due punishment."

IV

Towards the end of February 1684 Jeffreys left London to go on his first circuit as Lord Chief Justice. In his choice of the Western Circuit political considerations undoubtedly entered. The West of England was, by reason of the great woollen industry which flourished there, the wealthiest and most populous part of the country, and as a port Bristol ranked next after London in size and importance. At the same time the West was the principal stronghold of Dissent in the kingdom, and Monmouth and the Whigs looked to it for the bulk of their following. Jeffreys was accordingly instructed by the Privy Council to test the state of political feeling in those parts, and to persuade as many as he could of the towns through which he passed to save themselves the trouble of having *Quo Warranto* proceedings brought against them by surrendering their charters to the King.

He kept the Privy Council regularly posted of the progress of his journey. The circuit opened at Winchester, the first assize town in Hampshire. "Last night we arrived here," he wrote on February 28,

the ways being very foul, but the remembrance of them was soon passed over by the happiness I met with in the conversation of a numerous train of loyal gentlemen in this county who declare steadfast resolutions of using their utmost endeavours in his Majesty's service. Braddon's doctrine still obtains some credit near Andover, for Mrs Drake, the wife of a gentleman of quality in those parts, gave out many seditious and imprudent words about the business of the Earl of Essex, as also about the King's declaration on the discovery of the late conspiracy. I have sent for her and her husband to attend me to-morrow, and shall take care she be punished according to her demerits, and shall give you an account.¹

A week later he wrote from Dorchester, "We have now finished here. Several Dissenters have been prosecuted and convicted for twenty pounds. The gentry seem all unanimous in the county and zealously inclined to the King's service." From Dorchester Jeffreys proceeded to Launceston, whither all the cases in the Duchy of Cornwall were sent for trial. If

¹ C.S.P.(Dom.), 1683-84, p. 296.

the Lord Chief Justice shared Roger North's opinion of the Cornishmen as being "very fierce and contentious and strangely given to indict one another" he found the gentry more loyal than he expected. "In Cornwall and this county," he wrote from Exeter to Secretary Jenkins on March 17,

the gentry are for the most part very loyal, and seem well pleased with my assuring them that the King is resolved to be steady to his party and not to be guilty of any more slips, nor are they wanting in expressing their good affections by often remembering the indefatigable old Secretary's health. In my return from Cornwall I called at Plymouth, and have prevailed with the corporation to abide by their former resolutions of surrendering their charter, notwithstanding the endeavours of my brother Maynard, their Recorder. I shall attend you at my return with a copy of his letters to dissuade them from complying with the King.¹

Among those tried at Exeter was an old woman, Alice Molland, on a charge of witchcraft. It was one of the last trials of its kind in this country, but no detailed account appears to have been preserved. The unfortunate woman was convicted and, in accordance with the barbarous and medieval practice, sentenced to be burned alive.

Though Jeffreys discharged his circuit duties to the satisfaction of the King and Privy Council, there were not wanting signs of his growing unpopularity with the mass of the people both inside and outside London. "Some say," wrote a sarcastic observer at this time, "that five hundred horse will go out to meet Lord Chief Justice Jeffreys as he returns from his circuit, so much is he beloved." No sooner had he taken his place in the King's Bench than old Serjeant Maynard, who had returned from Plymouth, scored a neat revenge for the Lord Chief Justice's having supplied the Secretary of State with copies of his factious correspondence. Hot words passed between them during a civil case. Jeffreys lost his temper and told the Serjeant that he was so old he had forgotten all his law. True, Maynard had been practising at the Bar for upwards of half a century, but he was quite equal to Jeffreys. "Yes, my lord," he retorted, to the delight of the other counsel in court, who would not have dared to address the bench in this strain, "I have forgotten more law than you ever knew."²

¹ *C.S.P. (Dom.)*, 1683-84, p. 328; North, *Lives*, i, 155.

² *Hist. MSS. Comm., Report VII, Vernoy Papers*, p. 499.

Back in London the Lord Chief Justice found a number of prisoners awaiting judgment or sentence in the King's Bench. The first of these was the sixty-four-year-old Sir Samuel Barnardiston, who had been convicted at the end of the previous term on a charge of libelling the King and his principal officers.¹ Barnardiston was an unrepentant Whig, who had made a fortune in the East Indies, and who from the style of hairdressing which he affected in his young days, shortly before the outbreak of the Civil War, is said to have given rise to the name Roundhead. The libels were contained in a number of private letters which Barnardiston wrote to a friend mentioning the rumours of the day, and they had been opened in the post by the authorities. He had expressed opinions favourable to Russell and Sidney, and had said among other things that "the Papists and High Tories are quite down in the mouth" and that "Sir George [Jeffreys] is grown very humble." Having a personal interest in the case, Jeffreys ought not, of course, to have tried it at all, and it is a grave blot on his character that he did so. His summing up, too, in which he directed the jury to convict on the ground that the mere writing of the letters in itself amounted to a seditious act, was one of the most partial and most subservient to the Crown that he ever delivered. "As for anything he has said of me," observed Jeffreys on this occasion, "Sir Samuel Barnardiston shall write and speak of me as long as he pleases. But though he says I am down in the mouth, it is true I have a little lost my tongue by my cold, yet I hope I shall never lose my heart nor spirit to serve the Government, nor forbear to use my utmost diligence to see that such offenders as these persons that entertain principles so destructive to the Government be brought to condign punishment. And, be they who they will—were they my own brothers—I should be of the same mind, and so in that mind I hope I shall live and die."

When the prisoner came up for sentence Williams argued in arrest of judgment that the conviction could not stand on the ground that there was no evidence of malice. But Jeffreys' arbitrary interpretation of the law at the trial was upheld by the court without qualification. "The offence is so great,"

¹ Howell, *State Trials*, ix, 1333.

said Mr Justice Wythens, "I scarce know any punishment by our law big enough for it." As a result Barnardiston was fined £10,000, and committed to prison until the sum should be paid. He remained a prisoner until 1688, when he paid £6000 and was released on giving a bond for the residue.

The King was determined that the Whig plot should be stamped out with the utmost vigour, and he found his Lord Chief Justice Jeffreys a very willing instrument for carrying out the work of repression. Most of the conspirators had now been brought to justice, but there remained two who had fled the country and who had in consequence been declared outlaws. They were James Holloway and Sir Thomas Armstrong. Holloway, a native of Bristol, had been captured in the West Indies, where he had commercial connexions. The Attorney-General offered him a trial as an act of grace, but he refused this as he hoped to obtain a pardon from the King by making a full confession of all he knew about the plot. He made his confession, but the King was not disposed to show him any mercy. In granting a rule for his execution Jeffreys was careful to point out that "the outlawry is the judgment, and that is upon the record already"—in other words, as the prisoner was already attainted by outlawry upon an indictment of high treason, no judgment was necessary.¹

As for Armstrong, he had succeeded in making his escape to Holland at the same time as Lord Grey. He was reputed to be of vicious and debauched character, and he had on his hands the blood of at least one man, whom he had run through with his rapier in a fit of temper. He was a boon companion of Monmouth's, and for that reason was particularly disliked by the King, who considered him responsible for leading his son into evil company and still more evil ways. There was a heavy price set on his head, and, tempted by its size, a spy gave him away, and he was captured in Leyden. As a matter of fact, he had been born in the Low Countries, but he apparently forgot or else did not think it worth while to plead his Dutch birth. He did, however, raise a point of law when he was brought before Jeffreys in Westminster Hall, and a dramatic encounter followed.²

¹ Howell, *State Trials*, i, 6.

² *Ibid.*, x, 105; *Modern Reports*, iii, 47; Skinner, *Reports*, p. 195.

"My lord," he said, "I was beyond sea at the time of the outlawry. I beg I may be tried."

"That is not material at all to us," replied the Lord Chief Justice. "We have here a record of an outlawry against you, Sir Thomas."

"I desire to be put upon my trial, my lord."

"We cannot allow any such thing," said Jeffreys. "We have nothing to do upon this record but to award execution."

Then, turning to Captain Richardson, the grim gaoler of Newgate, who was standing near the bar, the judge went on, "Captain Richardson, what are your usual days of execution?"

"Wednesdays and Fridays, my lord," answered the gaoler.

At this moment there was a stir in court, and a woman came forward, holding an open paper in her hand. It was Armstrong's daughter, Mrs Matthews, who had come to support her father. "Here is a statute, my lord," she said bravely.

Jeffreys looked round. "What is the matter with that gentlewoman?"

"Hold your tongue," said the prisoner, looking at her. Then he turned to Jeffreys. "My lord, there is a statute made in the sixth year of Edward VI which I desire may be read." Armstrong then went on to explain that the statute gave an outlawed person the right to a trial within a year of his outlawry.

"Ay, let it be read," said the Chief Justice.

Mrs Matthews again came forward with her paper. "Here is a copy of it——"

"Why, how now?" said Jeffreys, gazing at her intently. "We do not use to have women plead in the Court of King's Bench. Pray be quiet, mistress."

When the statute was read the Attorney-General observed that, according to its provisions, the right of trial depended upon the prisoner's yielding himself up to the authorities, whereas Armstrong had been taken against his will. Jeffreys supported the Attorney and overruled Armstrong's plea. He also somewhat harshly refused to assign him counsel to argue it. The prisoner then referred to the case of Holloway, who had been captured in similar circumstances to his own and yet had been offered a trial.

The Lord Chief Justice addressed him sternly: "Sir Thomas Armstrong, you may go away with what opinion you please of

your own innocence; but you are attainted by outlawry. That which was done to him you speak of was the grace and mercy of the King, and he may, if he please, extend the same grace and favour to you; but that is not our business. We are satisfied that, according to law, we must award execution upon this outlawry.”¹

On hearing these words the prisoner's daughter started forward and said, “My lord, I hope you will not murder my father. This is murdering a man.”

“Who is this woman?” asked Jeffreys angrily. “Marshal, take her into custody. Why, how now? Because your relation is attainted for high treason must you take upon you to tax the courts of justice for murder when we grant execution according to law? Take her away.”

“God Almighty's judgments light upon you!” exclaimed Mrs Matthews.

“God Almighty's judgments will light upon those that are guilty of high treason,” retorted Jeffreys.

“Amen, I pray God,” muttered Mrs Matthews, as she was being led away.²

“So say I,” echoed the Chief Justice. “But clamours never prevail upon me at all. I thank God I am clamour-proof, and will never fear to do my duty.”

Armstrong then protested that the Privy Council had ordered counsel to be assigned to him, but as he was stripped of everything he had in prison he could not instruct them. “My lord, I know lawyers will not plead without money,” he added, “and, being robbed, I could not have wherewithal to fee them.”

“Sir Thomas Armstrong, you take the liberty of saying what you please. You talk of being robbed; nobody has robbed you that I know of.”

“Nobody says you do know of it, but so it is.”

¹ Jeffreys was wrong here, since he read into the Act of Edward VI words which were not there. There was nothing in that statute to prevent a man from yielding himself when brought into court by compulsion. See the opinion of Sir John Hawles, Solicitor-General in the reign of William III (Howell, *State Trials*, x, 123).

² Mrs Matthews was released later in the same day, and Jeffreys was commended in some quarters for letting her go after she had given the judge “a very savoury curse for which the Lord Chief Justice committed her to prison but very honourably released her presently” (Hist. MSS. Comm., Report VII, *Verney Papers*, p. 499).

"Nay, be as angry as you will, Sir Thomas," said Jeffreys suavely. "We are not concerned at your anger. We will undoubtedly do our duty."

"I ought to have the benefit of the law," pleaded the prisoner, "and I demand no more."

"That you shall have, by the grace of God," was Jeffreys' brutal answer as he turned to Captain Richardson. "See that execution be done on Friday next, according to law. You shall have the full benefit of the law."

And so in due course Sir Thomas Armstrong had the full benefit of the law.

v

Two other cases tried by Jeffreys in Trinity term 1684 are, perhaps, of interest, less by reason of their subject-matter and outcome than for the lively exchanges which passed between the Lord Chief Justice and the various counsel and witnesses in Westminster Hall. The first was the prosecution of a noted Whig Member of Parliament, William Sacheverell, and nineteen others for causing a riot in Nottingham on the occasion of the election of municipal officers under the new charter. In this town the local Whigs, being of the opinion that the new charter was illegal, drove the Tories out of the council chamber and proceeded to elect a mayor of their own.¹

Jeffreys laid about him with his usual vigour. One of the defendant's counsel protested that in asking the outgoing mayor for the mace he had not been "saucy."

"My lord, with submission I understand no such great sauciness in it to make a demand for an ensign of office."

"But I say it was saucy," retorted the Chief Justice, "and I tell you you had been saucy had you done it; for every man that meddles out of his province is saucy. You may carry that away with you among your other observations. Every little prick-eared fellow, I will warrant you, must go to dispose of the Government. . . . No, I tell you it was saucy, and if you had gone upon that errand you had been saucy."

"It may be I should have known better than to have gone on such an errand," this loquacious counsel continued, somewhat unwisely.

¹ Howell, *State Trials*, x, 30.

"So you should have done well to do," Jeffreys barked at him, "and you should know better than to ask such insignificant, impertinent questions as you do. It was very saucy, I tell you; and if the best man of your party had gone it had been saucy. You shall know our minds if you put us upon it, because you are so big of it. We are come to a fine pass that every little prick-eared fellow must come to demand maces that are the badges of authority, and they must not be told, forsooth, that they are saucy."

There were several other good passages in this trial, which was helped forward by Jeffreys' flashes of humour. Alderman Rippon, for instance, described the tumult, and how the people "flung up their hats in a very irreverent posture." He went on:

"I was fain to secure the charter, and a farrendine waistcoat that I had on was all rubbed to pieces to save the charter, and I had much ado to save it. My brother Parker, he was so afraid he got off the bench. 'Prithee,' said I, 'stay, for certainly they dare not do these things.' Says he, 'I am afraid of my life, and fare you well.' Mr Mayor and I sat awhile, for we knew not which way to take, but at last we got away through them. But if I touched ground I wish I might never see my wife again."

"Now," observed Jeffreys, with a smile, "whether that be a curse that thou layest upon thyself or no I cannot tell."

Alderman Parker was not diffident in describing his fear. After he left the Mayor he went to "my brother Hall's house," and said to his wife, "Sister, give me a glass of wine or sack, for I am even spent."

Jeffreys beamed. "That was to recover his heart again that was sinking, for an alderman's heart generally sinks in such a fright."

Parker continued unperturbed. "We did proceed on then, and I went back again. Said I, 'If they must be knocked on the head I will go and be knocked on the head with them.'"

"Ay," interposed Jeffreys, "his courage came to him again when he had a glass of wine."

In this trial Jeffreys kept his temper fairly well under control, and it was sorely tested when counsel for each of the twenty defendants wanted to make an opening speech. One of these

was John Holt, a future Lord Chief Justice. "Pray go on to your witnesses," Jeffreys said to him, "and do not spend your time in such trivial stuff; for this is all stuff, mere stuff."

"My lord," said Holt, "we would make out our defence——"

"Do so if you can," Jeffreys interrupted; "call your witnesses. We must not give liberty to every one of the counsel to make speeches of the same thing over and over again, and all to no purpose."

When Holt sat down a minute or two later another barrister got up and began to address the bench: "My lord, I desire to offer only one word that has not yet been said."

This was too much for Jeffreys. "No—I will hear no more speeches. Call your witnesses, if you have any. Sure you take yourselves to be in Common Halls and Council Houses making speeches."

In his summing up Jeffreys commented on the illegality of the defendants' actions. "They would have done well to have pursued the legal course only," he observed, "for I hope we shall never live to see that law prevail in England which is called club-law. Let the right be never so much on their side, they ought to make a rightful way to observe it, and not by any unlawful means." All the defendants except one were found guilty, and were fined according to their means in sums ranging from 5 marks (£3 6s. 8d.) to 500 marks (£333 6s. 8d.)—the latter sum being fixed in the case of Sacheverell, whom Jeffreys considered the ringleader, though he does not seem to have been so conspicuous in the riot as some of the others. But then, as Jeffreys remarked, "they that once begin first to trouble the water seldom catch the fish."

The other case of moment at which Jeffreys presided during this term was a civil one known as *Lady Ivy's Trial*.¹ Theodosia Ivy was a woman of a somewhat quarrelsome disposition, who had been married three times and had a passion for lawsuits. She took her title from her second husband, Sir Thomas Ivy, a successful East Indian merchant, who had been knighted at the Restoration, but, according to Sir John Bramston, Lady Ivy's uncle, "merited whipping rather." Her father, John

¹ Howell, *State Trials*, x, 555. See also the report of this trial in Sir John Fox's *Lady Ivy's Trial* (1929), which contains a most interesting and valuable critical introduction.

Stepkin, said to be a German by extraction, had bought Wapping Marsh, which had recently been drained. It was a portion of this land, roughly corresponding to the present Shadwell Park, about a mile and a half below London Bridge on the north side of the river, that formed the subject of the present dispute. Lady Ivy had only very recently been confirmed in the possession of this land by the Court of King's Bench, and her title was now challenged by a man called Thomas Neale, who claimed as a lessee of the Dean and Chapter of St Paul's Cathedral.

The trial aroused considerable interest, and an imposing array of counsel was briefed on either side. For the plaintiff there were Serjeant Pemberton (now a busy practiser since his dismissal from the bench in the previous year), Serjeant Stringer (whose son was to marry Jeffreys' daughter), Sir John Trevor (Jeffreys' cousin), William Williams, Roger North, and an ingenious barrister named Bradbury. Lady Ivy had briefed as her counsel Sawyer and Finch (the two principal Law Officers of the Crown), Serjeants Maynard and Lutwyche, Sir Edward Herbert, and Henry Pollexfen. The Lord Chief Justice was assisted on the bench by his three puisne judges, but they took virtually no part in the trial. Jeffreys managed the whole business, and on this occasion it must be admitted that he appears at his best.

There was a mass of complex and contradictory evidence given, and Jeffreys cross-examined every witness with remarkable thoroughness and skill. He had little difficulty in showing two of the defendants' witnesses to be lying. The truth was that the title-deeds on which Lady Ivy relied had been forged by her or at her instructions. It was one of the plaintiff's counsel, Bradbury, who first managed to bring this out; and he was so pleased that he could not resist the temptation of dwelling on his discovery. "Lord, sir," exclaimed Jeffreys, "you must be cackling too. We told you your objection was very ingenious, but that must not make you troublesome. You cannot lay an egg but you must be cackling over it."

The forged leases bore the dates of November and December 1555, but they described the King and Queen, Philip and Mary, by titles which they did not assume until several months later. One of these was King of Spain, which Philip inherited from

his father, the Emperor Charles V. The ingenious Mr Bradbury produced records in the shape of Acts of Parliament to prove that the addition of this and other titles did not take place until the Easter term 1556. The defendant, on the other hand, spoke of other records, but in fact produced a "little history" to prove that Charles V resigned the throne of Spain on October 25, 1555. Jeffreys quite properly refused to admit this as evidence for the defendant. Instead of the records which the defendant purported to adduce, he said, "the upshot is a little lousy history. Can't that be an answer to those great numbers of records brought by the other side? Is a printed history, written by I know not who, an evidence in a court of law?" It may be added that Jeffreys was right on the facts, for, although Charles V resigned the government of the Netherlands in October 1555, historians are generally agreed that he did not surrender the throne of Spain until the following year.¹

Solicitor-General Finch was unable to restrain himself from a gesture of annoyance when he saw his client's case breaking down.

"Nay, be not angry, Mr Solicitor," said Jeffreys, "for if you be we cannot help that neither. The law is the law for you as well as me."

"My lord," replied the Solicitor, with an air of resignation, "I must take the rule from you now."

"And so you shall, sir, from the court," said Jeffreys, whose temper was rising, "as long as I sit here; and so shall everybody else, by the grace of God. I assure you I care not whether it please or displease. We must not have our time taken up with impertinent things; for I must say there have been as many offered in this cause to-day as ever were in any cause that ever I heard; and if all be not as some would have it, then they must be in passion presently. The court gives all due respects, and expects them."

In his summing up the Chief Justice stated that, with the

¹ For more than a century Jeffreys' ruling in Lady Ivy's case was, by a curious error, cited in support of a directly opposite principle—viz., that a history book can be accepted as evidence to prove the date of an historical event. Of course, this is only so when there is also evidence to show that the book is a work of authority; but the error does not appear to have been corrected in the text-books on the law of evidence until the beginning of the nineteenth century. See J. P. Taylor, *Treatise on the Law of Evidence* (1920), ii, 1211.

exception of a famous case in the reign of James I,¹ it was the longest ever tried in Westminster Hall. "Besides that I never heard a cause of this length before." With so much complicated evidence to recapitulate and explain to the jury, it is remarkable that Jeffreys should have acquitted himself as well as he did. Lord Campbell, whose sketch of Jeffreys in his *Lives of the Chancellors* is, on the whole, thoroughly vitriolic, is obliged to admit as a lawyer that the Chief Justice's summing up in this case was "most masterly."²

On the strength of the forged deeds the plaintiff obtained a verdict, and Lady Ivy had to surrender the land in question. The forged deeds were then impounded in court, and Lady Ivy was subsequently prosecuted for forgery. But such, to use Jeffreys' expression, was "this slippery age we live in" that she was acquitted, and, litigious to the last, she even succeeded in recovering some of the land in Shadwell before her death in 1694.

VI

In July 1684 Jeffreys had again to leave London on assize, and this time he chose the Northern Circuit. The choice was prompted by his usual deference to the royal will, since a number of important towns in the North of England had been slow in surrendering their charters, and it was thought that the appearance of the Lord Chief Justice, coupled with the threat of *Quo Warranto* proceedings, would have the required effect in hastening compliance with the royal will. Before he set out the King presented Jeffreys with a diamond ring "publicly taken from his own finger," so that those whom he met in the North might know that he was the especial recipient of his Majesty's favour—in the language of the jealous Lord Keeper Guilford, "to blow his fame as favourite before the circuit." Or, as brother Roger put it,

this was certainly so done by way of engine to rear up a mighty machine of authority, and the printed news informed the whole nation of it. Whereupon the same Lord Chief Justice was commonly reputed a favourite and next door to premier Minister; sure enough to eclipse anything of the law that stood near him.

¹ *Colt v. Glover* (1 Rolle's Reports, 451). This was the case of commendams on account of which Lord Chief Justice Coke was dismissed by James I.

² iii, 582.

Charles also gave his Chief Justice a piece of advice which, by all accounts, Jeffreys found it difficult to take to heart. "Somewhat extraordinary from a King to a judge," says Burnet, "but it was not the less necessary to him." It was a particularly hot summer, said his Majesty, and "he therefore desired him he would not drink too much."¹

Jeffreys was accompanied by Holloway, one of the puisne judges in his court, and the pair had a truly magnificent progress. Enthusiasm for the Whig cause had so waned that most of the towns which they visited seemed eager to fête the judges and made little or no ado over the surrender of their privileges. In fact, as Roger North put it, the charters fell down before the Chief Justice like the walls of Jericho. The palatine city of Durham surrendered its charter into the hands of the Bishop, who on behalf of the King "reserved to himself and his successors in that see the power of approving and confirming the Mayor, Recorder, Aldermen, and Common Council of that city"—a surrender of liberty which wrung from the cautious chronicler Luttrell the words "O tempora!" Some of the towns surrendered their charters on a hint from Jeffreys that the new charters would contain additional privileges, and in some cases this actually happened. He assured the Mayor of Preston, for instance, that his corporation would not "be any ways injured in any of your privileges if I can prevent," while to the Mayor of Pontefract he wrote:

I think myself advised to give you this advice that you consider what privileges or advantages belonging to your town which were either omitted or not sufficiently granted to you by your old charter *may* be supplied by this new one, and I shall take care it shall be done.

When Jeffreys and his brother judge crossed the Humber for Hull they were greeted with a continuous salvo of guns. The river was crowded with vessels full of people anxious to pay their respects.

At landing [so a newsletter of the day tells us] the mayor and aldermen in their formalities and the officers of the garrison waited on them and passed before (the bells ringing and great guns firing all the while) to the mayor's house, where they lodged

¹ North, *Lives*, i, 277, 308; *Examen*, p. 625; Burnet, ii, 411; Luttrell, i, 313.

and after a short refreshment went to the Guildhall, where a splendid dinner was prepared for them.

At the gates of York the judges were received with full military honours by order of the loyal Governor, Sir John Reresby, who waited on them at their lodgings and invited them to dinner. By way of return for these civilities Jeffreys called upon the Governor one evening incognito, and, "being a jolly merry companion when business was over," according to his host, so far forgot the King's salutary advice as to have "stayed with me over a bottle till one in the morning."¹

On his return to London Jeffreys was, much to the dismay of the Lord Keeper, admitted to the Cabinet. This select body, which had lately begun to take shape as a permanent feature in our Constitution, was evolved from the larger Privy Council, and, according to Roger North, "consisted of those few great officers and courtiers whom the King relied upon for the interior dispatch of his affairs." Besides Lord Keeper Guilford, the other members included Rochester, Lord President of the Council; Halifax, Lord Privy Seal; Lords Sunderland and Middleton, Secretaries of State; Godolphin, First Lord of the Treasury; and the Duke of York, who again exercised his old powers, even if he did not enjoy the title of Lord High Admiral. Membership was acquired by royal summons to the meetings, which took place every Sunday evening in the King's apartments in Whitehall. There is little doubt that the Chief Justice's summons was due to the influence of the Duke of York, whom Jeffreys had obliged by investigating the condition of the Catholics in the North of England.² When he went on the Northern Circuit the Chief Justice instructed the under-sheriffs and bailiffs to supply him with the names of all Catholics who were either in custody or liable to arrest for

¹ Luttrell, i, 314; North, *Examen*, p. 626; Muddiman, p. 154; Sir John Reresby, *Memoirs* (1936), p. 341; British Museum, Add. MSS. 12097; *Notes and Queries*, Second Series, ii, 25, Fourth Series, vi, 541.

² North, *Lives*, i, 299 *et seq.* Fortunately for the development and reputation of our judicial system, the precedent set by the admission of Jeffreys to the Cabinet was not followed. In 1806 Addington insisted on bringing his friend Lord Chief Justice Ellenborough into the Cabinet, and the innovation was attacked by the Opposition in the House of Commons, when it was represented that Jeffreys was the only instance of "a Cabinet judge." As a matter of fact, Lord Chief Justice Mansfield had been a member of the Granville Ministry from 1763 to 1765, but that is the only other recorded instance. (See Hist. MSS. Comm., *Fortescue Manuscripts*, viii, 26.)

breaches of the recusancy laws, which required them to attend their parish church from time to time and receive the sacrament according to the English rite.

The Chief Justice arranged beforehand with the Duke of York the course of action he should follow at his first Cabinet meeting. When the King and the other members were in their places Jeffreys got up, and Lord Keeper Guilford noticed that the rolls of recusants were lying before him on the table. "Sir," he said, addressing Charles, "I have a business to lay before your Majesty which I took notice of in the North, and which will deserve your Majesty's royal commiseration. It is the case of numberless numbers [*sic*] of your good subjects that are imprisoned for recusancy. I have the list of them here, to justify what I say. There are so many that the great gaols cannot hold them without their lying upon one another." And then, to quote Roger North, who had the account of this meeting from his brother the Lord Keeper, Jeffreys "let fly his tropes and figures about rotting and stinking in prisons, concluding with the motion to his Majesty that he would by his royal pardon discharge all the convictions for recusancy, and thereby restore liberty and air to these poor men."

Jeffreys sat down and gathered his papers together. For a minute or two there was silence. The Lord Keeper expected some Minister who had the Protestant interest at heart, such as Halifax or Rochester, to denounce the proposal, but they had all been previously approached by the Duke of York, and they wisely held their peace. At last the Lord Keeper plucked up courage and addressed the King.

"Sir," he said, "I humbly entreat your Majesty that my Lord Chief Justice may declare whether all the persons named in these rolls were actually in prison or not."

The Lord Chief Justice hastily interposed, saying that "he did not sure imagine anyone could suspect his meaning to be that all these were actual prisoners, for all the gaols in England would not hold them. But if they were not in prison their case was little better; for they lay under sentence of commitment and were obnoxious to be taken up by every peevish sheriff or magistrate, and were made to redeem the liberty they had with gross fees, which was a cruel oppression to them and their families."

The Lord Keeper, as custodian of the royal conscience as well as of the Great Seal, under which any such pardon would have to pass, felt bound to advise against the proposal. "Sir," he said to Charles, "I beg your Majesty will consider what little reason there is to grant such a general pardon as this is at this time. For they are not all Roman Catholics that lie under sentence of recusancy, but sectaries of all kinds and denominations, perhaps as many or more who are all professed enemies to your Majesty and your Government in Church and State." He went on to suggest that pardons might be granted to individual Catholics, but not to Catholics generally. As for those who had to pay charges to the sheriffs, he argued that this was only reasonable, since they did not have to bear the expenses of any civic offices.

Nothing more was said at the time, and the meeting proceeded to other business. But that night the Lord Keeper returned to his fine house in Westminster "full of melancholy." He paced restlessly backward and forward, saying to his brother Roger, "What can be the meaning? Are they all stark mad?" Before he went to bed the unhappy Guilford wrote in his diary against the day's date, "*Motion cui solus obstiti.*"¹

The faithful Roger North tells us that his brother "accounted this action of his the most memorable he had ever done." The Lord Keeper was right. A serious rival to his influence had appeared in the Cabinet, and the wretched Guilford had the unpleasant feeling that this rival would never rest until he had forced the Great Seal from his weakening grasp. From now on the Chief Justice lost no opportunity of thwarting and humiliating the Lord Keeper. On one occasion he is said to have come into the council chamber "flaming drunk," where he "fell to talking and staring like a madman," and, with a knowing look towards Guilford, "at length bitterly inveighed against Trimmers and told the King he had Trimmers in his Court and he would never be easy so long as the Trimmers were there." In Roger North's words,

the Lord Chief Justice Jeffreys was brought forward and buoyed up by the adverse party of the Court on purpose to ruffle my Lord Keeper, and, by such means as they might lay hold of or invent, to have him out: in order to which affronts, disappoint-

¹ "Motion which I alone opposed." North, *Lives*, i, 307-312.

ments, false stories, and calumnies were for such attacks choice artillery. And, that point being once gained, it was presumed that the Lord Chief Justice Jeffreys, one ready to do all that was required of him, should succeed.

About this time a judgeship fell vacant, and Guilford recommended Serjeant Bedingfield, "a grave but rather heavy lawyer," for the vacancy. The Serjeant gratefully declared that he would "ever own his preferment as long as he lived to his lordship and to no other person whatever." But the Serjeant had a brother, a woollen-draper in the City, who was a friend of Jeffreys, and he told the Chief Justice that Bedingfield was to be promoted to the bench through Guilford's influence. If we can believe Roger North, Jeffreys made it clear that the Serjeant's only hope of reaching the bench was through his influence, and not the Lord Keeper's, and Bedingfield, whose "spirits were not formed for the heroics," was eventually obliged to submit to the Lord Chief Justice. But his hopes were not immediately gratified, for the vacancy went to Serjeant Wright, a nominee of Jeffreys, whose ignorance of the law and low moral character rendered him in every way unsuitable for the appointment.

Sir Robert Wright was a member of a good Suffolk family, but an exceedingly poor lawyer. He came from the same part of the country as Lord Keeper Guilford, whom he had known as Francis North, and upon whom, it is said, he relied implicitly when required to give a written opinion. His "voluptuous, unthinking way of life" led him into acute financial embarrassment," so that he had to invoke North's assistance in another capacity, this time persuading him to become the mortgagee of his estate. Wright subsequently mortgaged the estate to some one else, but fraudulently tendered the second mortgagee an affidavit that it was free from all encumbrances. Some years later he met Jeffreys, to whom he is said to have recommended himself by his ability as a mimic. When the vacancy occurred on the bench he begged Jeffreys to get him the place, for his fortunes were at such a low ebb that "if he failed now he was utterly ruined." Since judges were appointed by the King and held office during his pleasure, the Lord Chief Justice went to Charles and proposed Wright in warm terms. The King sent for Guilford, and, in the face of the Lord Keeper's

objections, demurred for a time about making the appointment. Jeffreys pressed his nominee, and, although Guilford protested that Wright was "a dunce and no lawyer; not worth a groat, having spent his estate by debauched living; of no truth nor honesty, but guilty of wilful perjury to gain the borrowing of a sum of money," his protest proved useless. The King yielded, and Guilford had the humiliating duty of issuing the patent for Wright's appointment under the Great Seal. Jeffreys added insult to injury by embracing Wright in Westminster Hall and whispering to him with meaning looks in the direction of the wretched Lord Keeper and his court, who could not help witnessing this exhibition of patronage, as, indeed, it was intended that they should.¹

The King, whose health was gradually declining, spent a good deal of time at Winchester, where he was building a new house, for he preferred the air there to that at Windsor. In September Jeffreys was summoned to Winchester to receive the royal commands respecting the City and the grant of a new charter. He was reported to have had "above an hour's private discourse with his Majesty," and to have come away with instructions that the proposed new charter was to be approved by himself. Henceforward Jeffreys ruled the City with a rod of iron, and the Lord Mayor and Aldermen, whose nomination he sanctioned, were entirely dependent upon his goodwill for their positions. We find him, for instance, being moved about this time to prevent the nomination as alderman of a man called Brereton on the ground that he "has been noted for some years as a very factious person and a frequenter of conventicles, and who for ten years together never received the sacrament in his parish church and very rarely in that time came within the doors of it." Shortly afterwards the Mayor, Sir James Smith, confessed to Sir John Reresby, the Governor of York, that

he had the title of Lord Mayor, but my Lord Chief Justice Jeffreys usurped the power, that they had no access to the King, nor any message or direction from him as to any business but by that lord, that whatever was well done in the City was attributed to his influence and contrivance, that himself and the Aldermen were looked upon at Court as his instruments, and that upon all

¹ North, *Lives*, i, 322-328.

occasions his lordship used them contemptibly and not according to the dignity of the City.¹

Jeffreys was supreme in the City, but he was not generally beloved there. Discreditable tales about his conduct both on the bench and in his private life began to spread. One of them reached his ears through a certain Alicia Charles, who was employed as a charwoman at his house in Aldermanbury. According to Alicia Charles, an acquaintance of hers, by name Susan Welden, while gossiping with her spoke "opprobrious and contemptuous words" of her master—to wit, that "the Lord Chief Justice Jeffreys, like a cheating knave as he is, hath bailed many an honest man out of his life, and five or six the last circuit he went," thereby, in the words of the indictment subsequently preferred against Susan Welden, "pointing to the fact that the said Sir George Jeffreys, knight and baronet, was appointed to take assizes in the county of York and delivered the gaol of the county of York of the prisoners being in the same." Fortunately for Susan Welden, when she was brought to trial the jury seem to have sympathized with her. At any rate, she was acquitted.²

VII

In the early hours of the morning of September 23, 1684, the Chief Justice was awakened in his house in Aldermanbury by one of the King's messengers, who informed him that he had just taken into custody a prisoner whom he now asked should be committed to gaol. The prisoner was the Rev. Thomas Rosewell, an elderly Nonconformist divine, who had been dragged from his bed in Rotherhithe on a charge of preaching a treasonable sermon. That Jeffreys was annoyed at being disturbed at such an hour is clear from Rosewell's own description of the encounter, when, so he said, the Chief Justice behaved like "a roaring lion or raging bear." Asked by Jeffreys where he preached, he answered in Latin. Jeffreys, who seems to have been unaware that Rosewell, like himself, had received an excellent grounding in the classics at

¹ *C.S.P.(Dom.)*, 1684-85, pp. 138, 142; Jeffreys MSS. (*Home Counties Magazine*, xii (1910), 10); Sir John Reresby, *Memoirs* (1936), p. 380.

² Jeaffreson, *Middlesex County Records*, iv, 262.

Westminster School, suggested that this was a ruse and that the preacher could not speak another word of Latin. "To save his neck," as he put it, Rosewell then spoke in Greek. This was too much for Jeffreys. He consigned the preacher to the Gatehouse Prison, and retired to bed.

Two months later Rosewell appeared in Westminster Hall to stand his trial on a charge of high treason. Rosewell admitted to having broken the law in holding prayer-meetings in private houses, but he denied that he had preached treason. The case against him rested on the evidence of three women who had attended one of these meetings, which had lasted from seven o'clock in the morning until two in the afternoon. In his sermon Rosewell was alleged to have said, among other things, that "we have now had two wicked Kings together, which have permitted Popery to come in under their noses, and could be compared to nothing but to most wicked Jeroboam." Jeffreys gave Rosewell every latitude in his defence, and allowed him to cross-examine the Crown witnesses direct, instead of, as was usual in treason trials, through the medium of the bench. But when the prisoner asked leave to speak to one of the witnesses "as a divine" Jeffreys pulled him up. "Ask her what questions you will," he said, "but we will not have any of your preachments here. You must consider where you are; you are not now in your pulpit, but at the bar. I assure you we do not intend to make a conventicle of the King's Bench Court."¹

The Chief Justice seems to have enjoyed himself thoroughly at this trial. He ordered Wallop out of court, because he had come to look on and had no brief. He reproved other counsel for talking to each other ("Look you, gentlemen, you must not have interlocutions among yourselves"), and he openly laughed at the discomfiture of the Recorder, Thomas Jenner, who was at the best a poor creature. According to a witness, Rosewell had said in his sermon that "it was a fine sight to see fools in scarlet gowns," and that he had "heard the Recorder was to be made a judge."

"He hears strange stories, it seems," remarked Jeffreys slyly, looking in the Recorder's direction. "What make you of this, brother Jenner?"

¹ Howell, *State Trials*, x, 147.

Jenner remained silent, while Rosewell exclaimed, "God forbid, my lord, this should be true."

"You see he swears it," answered Jeffreys.

A learned argument then ensued between the Chief Justice and the prisoner on the merits of the indictment. This time it was Roger North who began to feel uncomfortable, for he had drawn the offending document. Rosewell objected, for instance, to the rendering of "under their noses" as *in eorum conspectu*.

"Pray, how would you put that into Latin," asked Jeffreys, "'under their noses'?"

"My lord," replied Rosewell, "if I should speak according to the other parts of the Latin of this indictment, which your lordship says must exactly pursue the English, I would render it *sub naribus illorum*."

This argument proving inconclusive, the prisoner called evidence in an attempt to discredit the Crown witnesses. This was not difficult, for two of them were common informers and women of low moral character who were not beyond stooping to blackmail. But it was no use. Jeffreys in his summing up virtually directed the jury to convict the prisoner, and they appear to have had no hesitation in doing so.

It seems, however, that Jeffreys was not anxious that Rosewell should suffer the full rigours of the law, but merely intended the trial to serve as a warning to those who were in the habit of frequenting conventicles. At all events, when the prisoner came up for judgment, and again protested that the indictment was bad, Jeffreys surprised every one by declaring there was some substance in the objection and in assigning counsel to argue it. On hearing the argument on either side the Chief Justice announced that the court would take time to consider their decision. Meanwhile one of Rosewell's witnesses, Sir John Talbot, had gone to Whitehall and bearded the King. "Sir," he said, "if your Majesty suffers this man to die we are none of us safe in our houses." Charles wisely saw the folly of this proceeding, and decided to grant Rosewell a pardon. Fortunately for Jeffreys, the pardon reached him before the Court of King's Bench was called upon to give final judgment.

Wherever politics entered—and in the causes tried in the

King's Bench they were seldom absent—Jeffreys' zeal to serve his royal master frequently led him into the most flagrant partiality on the bench. On the other hand, when any prisoner was unexpectedly acquitted the Chief Justice's enemies were not slow to scent a corrupt bargain. While Rosewell's fate was still undecided a London banker named Joseph Hayes was tried on a charge of high treason in sending money to the late Sir Thomas Armstrong during his outlawry. In the face of the clearest evidence of his guilt Hayes was acquitted, and Jeffreys, who tried the case, was subsequently accused by Roger North of accepting a bribe to influence the jury in their verdict. The report of the trial does not, however, bear out this accusation.¹ In the face of the prisoner's objection, which he told him was "the idle whim of an enthusiastic counsel," he allowed his supposed handwriting on a bill of exchange, following the case of Algernon Sidney, to be proved as evidence of treason by witnesses who swore to a belief that it was his from a comparison with specimens of his handwriting in other documents. Furthermore, he summed up dead against him. Hayes's acquittal can only be accounted for by the dislike of the jury for the straining of the law against prisoners in treason trials, and they were unwilling that this prisoner should share the same fate as Algernon Sidney.

Pritchard v. Papillon was another case tried this term in which Jeffreys gave rein to his prejudices and bad manners.² Papillon, it will be remembered, was one of the unsuccessful Whig candidates for the office of Sheriff in the riotous City elections in 1682. Considering himself to have been rightfully elected, he foolishly commenced proceedings against the ex-Lord Mayor, Sir William Pritchard, for refusing to swear him in to office. He persuaded the City coroner to execute the warrant, and as a result Pritchard was arrested and kept in custody for a few hours. He was then rescued by the trained bands, and proceeded to bring an action against Papillon for false imprisonment. The Lord Chief Justice voted the Whigs all round as "notorious Dissenters or profligate atheistical villains that herd together." When some one started to hiss at the back of the court he fairly lost his temper and bawled out,

¹ Howell, *State Trials*, x, 307; North, *Lives*, i, 281.

² Howell, *State Trials*, x, 319.

"Who is that? What, in the name of God! I hope we are now past that time of day that humming and hissing shall be used in courts of justice. But I would fain know that fellow that dares to hum or hiss while I sit here. I'll assure him, be he who he will, I'll lay him by the heels and make an example of him."

If he failed to detect the offender on this occasion Jeffreys certainly saw to it that the jury made an example of Papillon. "You had much better keep to your counting-house, I tell you," the Judge said to the defendant, "and mind your merchandise." Under the Chief Justice's stimulus the jury brought in a verdict of £10,000 damages against Papillon. "Gentlemen," said Jeffreys, addressing them, "you seem to be persons that have some sense upon you, and I think have given a good verdict, and are to be greatly commended for it." To save himself from complete financial ruin the defendant wisely absconded.

"We live in an age wherein men are apt to believe only on one side," remarked Jeffreys, with great truth, at this time. "They can believe the greatest lie if it makes for the advantage of their party, but not the greatest truth if it thwarts their interests."¹ In these words Jeffreys summed up accurately the salient failing in his own character and career. He was so partisan in his opinions and judgments that it was rumoured that even the King was coming to think that his Chief Justice's zeal outran his discretion. Towards the end of this year, according to Roger North, Charles was beginning to tire of Jeffreys and his other extremist adviser, Sunderland, and was secretly contemplating their removal from the Cabinet, if not from their other posts.² It is impossible to verify this assertion, since the monarch gave no outward hint to others of this antipathy, if, indeed, it existed. Early in the New Year (1685) Charles was stricken with a fatal illness. In the shadow of the throne loomed the sinister figure of his brother and successor, James, Duke of York, and, far from dismissal at his hands, Jeffreys was confident in the expectation of further advancement.

¹ Howell, *State Trials*, ix, 1206.

² *Lives*, i, 319.

THE BLOODY ASSIZES

ON the evening of the 5th of February, 1685, King Charles II of England lay on his deathbed in the Palace of Whitehall. A few days previously he had been stricken down with an attack of apoplexy while in the council chamber; and his failing constitution, which had been alternately ravaged and repaired by violent excesses and equally violent exercise for over forty years, could no longer stand the strain which this regimen put upon it. A Catholic priest, who had been smuggled to his bedside by the solicitous Duke of York, now administered the last rites of that Church whose comforts the dying monarch had never dared to receive during his lifetime, but with whose teaching he had long been in sympathy. Twelve hours later Charles was dead. "The news," wrote Luttrell at the time, "put the town in a great consternation, and the gates of Whitehall were shut up and the guards drawn out." Meanwhile in the palace the Privy Council met; and the Duke of York, who for the first time presided at the board under the style of his Majesty King James II, was "pleased to declare that he would maintain the Government as established both in Church and State, and he would preserve his prerogative, and the rights and liberties of his subjects, especially in that of his clemency and tenderness." On the same day the new sovereign was proclaimed by the Heralds at Whitehall, Temple Bar, and the Royal Exchange.

On the following day the Lord Chief Justice took his seat on the bench in Westminster Hall under a fresh commission which retained him and his brother judges in their places. Jeffreys welcomed the change, and he was among the few who did so. Although Charles had raised him to the second judicial post in the realm and had admitted him to his Cabinet, the late monarch was too astute to let himself be guided in all things by such a reactionary adviser as Jeffreys. He had declined to accept his advice on more than one occasion. He had, for instance, refused to make all 'petitioning' a crime, and also to

issue a general pardon to the Catholic recusants, although Jeffreys had counselled both these courses. With James, however, there was no such squeamishness, and the new monarch soon showed that his Chief Justice was a man after his own heart, one who would be prepared to assist in the enlarging of the royal prerogative to a seemingly limitless extent. At one of the first meetings of the Privy Council in the new reign Jeffreys moved that his Majesty should issue a proclamation empowering himself to collect the customs dues and other State revenues as they had been collected in the previous reign, notwithstanding that Parliament had only voted them for the life of his late brother. Lord Keeper Guilford pointed out the doubtful legality of this action and the handle which it might give the King's enemies, but James took no notice of this advice and proceeded to collect and apply the revenues to his own purposes.¹

James cannot have failed to be gratified by a written judgment which Jeffreys delivered in Westminster Hall a few days before his brother's death, since the decision was of considerable importance to the Crown. This was his judgment in *The East India Company v. Sandys*, or the *Great Monopolies Case*, which was to be of considerable importance in the future development of British India. The action was brought to test the validity of the Company's royal charter, which, it was claimed, gave the plaintiffs the exclusive right of trading in all territories east of the Cape of Good Hope. By trading within the prescribed limits, it was further alleged, the defendant had infringed the Company's rights. In a long and elaborate judgment in favour of the plaintiffs, which Lord Campbell hails as "one of the best specimens of Jeffreys' judicial powers," the Lord Chief Justice held that such a charter might be granted by the Crown so as to create a monopoly without any confirmation by Parliament. "The East India Company," he said, "have solely run the hazard and been at great expenses in discovering places, erecting forts and keeping forces, settling factories, and making leagues and treaties abroad. It would be against natural justice and equity (which no municipal law can take away) for others to reap the benefit and advantage of all this."²

¹ Luttrell, i, 327-328; North, *Lives*, i, 333-335.

² Howell, *State Trials*, x, 519-554.

Early in March the Lord Chief Justice left town on circuit. This time he chose the Eastern Circuit, principally because it included the county of Buckingham, where his country place was situated, and where, in view of the forthcoming General Election which had been announced, he hoped, as he told Sunderland, to "serve his master's interests." His progress from assize town to assize town, if we can believe contemporary accounts, developed into an electioneering tour. For the first time, too, his progress on circuit was checked by a "fit of the stone," for that painful malady was beginning to assert itself in his system with more and more unpleasant effects. In Jeffreys' case there is reason to believe that it did not, as frequently happened, arise in the kidneys, but had its origin in the bladder itself, and slowly enlarged there. He might have followed Samuel Pepys's heroic example and have had it removed by the crude surgical methods then in vogue, but he probably shrank from this uncertain and dangerous operation, for the rate of mortality due to sepsis was very high. Instead he found relief in copious and frequent draughts of weak punch, which eased the pressure of the stone on the sides of the bladder, but it was at the best a temporary relief, while the acute pain kept recurring. It is no doubt largely responsible for the charge that Jeffreys appeared so frequently drunk, whereas the disordered appearance on the bench noticed by his contemporaries was in reality due to the intense physical suffering which he was undergoing. Long journeys, it may be added, over bad roads in jolting coaches did not alleviate the disease nor improve his temper.¹

¹ J. Kemble, *Idols and Invalids* (1933), p. 52 *et seq.* According to this expert writer, "in the medical books of the time the term 'stone' was used to mean stone in the bladder, whereas 'stone in the kidneys' was given its full title and treated differently. The references to Jeffreys' affliction mention always 'stone,' 'fit of the stone,' or 'stone and strangury.' Now, a stone in the bladder, while not producing symptoms so acute as to force the patient to bed, can yet cause such persistent discomfort and constant harassing pain as to make his life a thorough misery. The difficulty of micturition, the frequency of the unrelieving calls by day and by night, the perpetual sense of weight locally—these symptoms would inevitably have produced, especially in a man of Jeffreys' inclination, such an irritability of mind that it is little wonder that men who came before him, to argue their defence, should have been greeted with short patience." Further information on the malady of the 'stone' in the seventeenth century is contained in *Notes and Queries* (1928), vols. cliv, clv, *passim*. In 1737 the great surgeon William Cheselden, who perfected the operation of cutting for the stone, removed a stone which weighed 6½ oz. and measured 9 inches in circumference; it is stated to have been almost as large as a fist.

A curious incident occurred at Bedford. The sheriff's chaplain, a man named Pomfret, who was vicar of Luton, chose for the subject of his assize sermon the courage of Shadrach, Meshach, and Abednego in disobeying the royal command to bow down before an image. The sermon was really directed against Popery, but the Lord Chief Justice mistook its tenor and supposed it to express a covert sympathy with resistance to kingly authority. He rose in a passion from his seat in the church, and would have dragged the offending preacher out of the pulpit had not his brother judge, Wythens, plucked him by the arm and restrained him from this dire purpose. The preacher appears to have seen what was happening, and, changing his theme, "uttered all loyalty and obedience." In fact, he went so far as to sing the praises of the divine right of monarchs to such an extent that Jeffreys at the conclusion of the sermon "was impatient (as fiery at the first) to embrace the preacher coming down the steps"; he then begged him to publish it, which the chaplain agreed to do, with a dedication to the Lord Chief Justice. Jeffreys furthermore invited him to dinner, where, said another guest, "I fear the bottle went too fast."¹

At the conclusion of the circuit Jeffreys retired to Bulstrode, whence he proceeded to bring the weight of his influence to bear in the Tory interest at the elections for the county, Buckinghamshire, which returned two knights of the shire to the House of Commons, and was predominantly a Whig county; but the Lord Chief Justice hoped that, with the exercise of some ingenuity and endeavour, the Tories might capture one of the seats. Their candidate, Mr Hackett, was "an unknown young gentleman of the neighbourhood of Newport Pagnell." His two Whig opponents were Lord Brackley, the eldest son of the Lord-Lieutenant, the Earl of Bridgewater, and the Hon. Thomas Wharton, the eldest son of Lord Wharton. Jeffreys threw himself into the contest with great vigour and bitterness, since one of the Whig candidates, Wharton, was particularly objectionable in his eyes as having carried up the Exclusion Bill from the Commons to the Lords some years before.

The Lord Chief Justice proved himself an election agent of

¹ Ailesbury, *Memoirs* (1891), i, 160. Shortly after this incident (April 11, 1685) Jeffreys was chosen Recorder of Portsmouth, but the duties of the office were performed by deputy (R. J. Murrell and R. East, *Portsmouth Records* (1884), pp. 249, 413).

considerable skill. The polling began at Aylesbury, and, seeing that the voting was going against Hackett, Jeffreys persuaded the sheriff suddenly to adjourn the poll to Newport Pagnell, fifteen miles away, where he thought the Tory candidate's chances would be brighter. Here the Tories had engaged all the inns, so that their opponents could find no accommodation in the town, and, in Macaulay's words, "the Whig freeholders were compelled to tie their horses to the hedges and sleep under the open sky in the meadows which surround the little town." But this ruse was of little avail to the Tories. Wharton removed any doubts of the result by the lavish distribution of bribes to the electors—he spent £1500 in one day—and the result was that the two Whigs were duly returned.

Jeffreys was furious, for not only did the Whigs gain the county, but their candidates got in for most of the boroughs as well. One of these was that staunch old Parliamentarian Sir Ralph Verney, for whom the Lord Chief Justice had now a particular aversion. "I wish," wrote Verney's sister to him,

I could come in company with that mighty man that spits his venom in every place at you. I long to see him, but not out of love, but fancy I could hit him more home than he can you, and would do and wildly too. He deserves to be told his error, though not affronted for his master's sake, who I think he does great prejudice to instead of serving; and fancy it will be thought so in time, railing not becoming his grandeur.¹

The Lord Chief Justice was back in town for the coronation of James and his wife, Mary of Modena. The service took place in the Abbey at Westminster, and Jeffreys cannot have noted with complete equanimity that the sacrament was omitted. But any doubts about the propriety of this course which he may have had were solaced by the customary honours that his Majesty distributed shortly after the ceremony. For some time past, even in the last months of the previous reign, there had been a rumour that Jeffreys would be raised to the peerage. The accomplished fact was now proclaimed to the world. In the words of the preamble to the patent of creation, which it has been alleged that Jeffreys himself composed,

Since our much loved and right faithful counsellor George Jeffreys, Knight and Baronet, hath advanced through the degrees

¹ *Verney Memoirs* (1892-99), iv, 334-338; Macaulay, i, 473.

of jurisprudence with such diligence and success as that when we were Duke of York we chose him to be our Solicitor-General and held his fidelity and courage undoubted in all things which touched our person, especially at that time when by the wicked instigation of some factious persons we were torn from our most illustrious brother, our Lord Charles the Second, . . . against his will, and scarcely less than banished from his most kindly presence, first into Flanders, then into Scotland, . . . we of our will, and from that regard which we bear the said George Jeffreys are of the opinion that he should be admitted amongst the peers of this realm.¹

Towards the end of 1684 Jeffreys had purchased from Daniel Wycherley, the father of the dramatist, the manors of Wem and Loppington, in Shropshire.² He therefore decided to choose Jeffreys of Wem as his barony, and under this title the patent was duly gazetted. Only two others were similarly honoured at this time. Henry Jermyn, one of the King's Catholic advisers, became Baron Dover, and John Churchill, a rising courtier and soldier, took a step towards the dukedom of Marlborough by entering the House of Lords under the title of Baron Churchill. Jeffreys and the other two newly created peers took their seats in the Upper House at the opening of the session on May 19, 1685.³ Jeffreys was the first Chief Justice in office to be so honoured; but then, as Burnet sneeringly remarked of this distinction, "he affected to be an original in every thing."⁴

II

In the infliction of vengeance upon the "factious persons" mentioned in Jeffreys' patent of peerage the new King had an admirable instrument in the person of his Lord Chief Justice. The first to suffer was Titus Oates. He had been in prison

¹ Woolrych, p. 157.

² The manors of Wem and Loppington were purchased by Jeffreys from Wycherley on December 23, 1684. The price paid was £9000. The manor of Wem comprised the market town of that name and several hamlets, including Wolverley and Aston, which had large houses whose reversion Jeffreys also acquired. But he never seems to have lived in any of them, or, indeed, to have visited the property (Garbet, *History of Wem*, pp. 84, 95).

³ G.E.C., *Complete Peerage*, vii (1929), 83 (patent of creation dated May 16, 1685); Garbet, *op. cit.*, p. 91; Luttrell, i, 342. The peerage was, like his baronetcy, limited by the patent of creation first to his heirs by his second wife and then to his heirs generally. This limitation was no doubt inserted at the prompting of his wife. In fact, however, his sons by this marriage all died in infancy, so that at his own death in 1689 his hereditary honours descended to his only surviving son by his first wife.

⁴ iii, 84.

since the previous summer, when he had been arrested on the charge of slandering the Duke of York by calling him a traitor. On this occasion he had appeared before Jeffreys in Westminster Hall, and, like Pilkington and other notorious Whigs, been cast in damages to the amount of £100,000. Being unable to pay the tremendous sum, he had remained in prison until the accession of James II led to his being brought out and tried on the well-merited and long-overdue charge of having committed perjury during the Popish Plot trials. There had also been some talk of prosecuting him for unnatural vice, but these proceedings were ultimately dropped for lack of evidence.

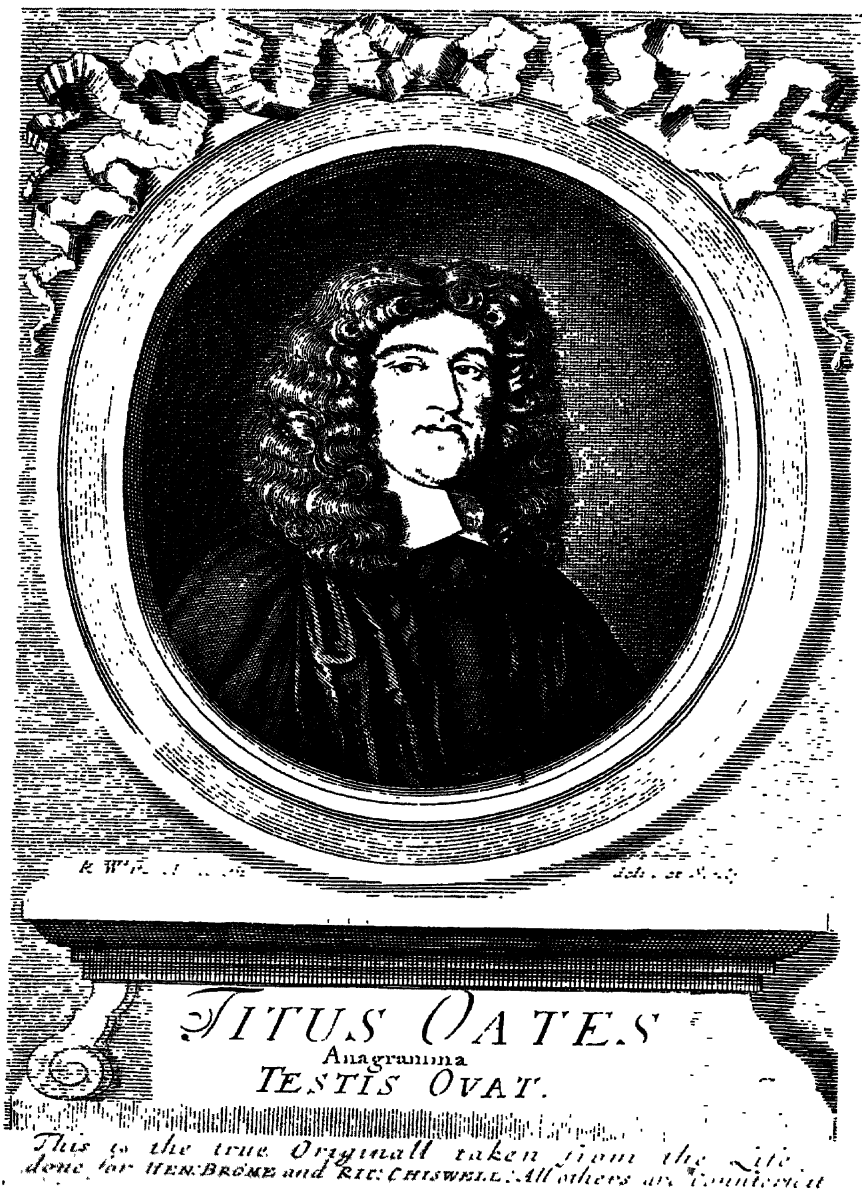
Oates was brought up to the bar of the King's Bench on May 8, 1685.¹ The court was crowded with Catholics, who had come in the hope of witnessing a just retribution overtake the scoundrel who had sworn away the lives of so many of their co-religionists. The prisoner had to answer two indictments for perjury. The first of these charged him with having falsely sworn at the trial of Pickering and Ireland in 1679 that he had been present at the Jesuit "consult" at the White Horse Tavern in the Strand. The Crown called a number of Catholics who had been fellow-students with Oates at the Jesuit seminary at Saint-Omer, some of whom had given evidence in the Popish Plot trials, but their testimony had not been believed by the juries then, simply because they were Papists. Now that there was a Catholic monarch on the throne of England the credit of these gentlemen was naturally substantiated. They proved—and this time there was no doubt of it—that at the period in question Oates was with them in the seminary, and did not set foot in England until the end of June 1678. Oates retaliated in cross-examination by making each witness profess his religion and asking him what he was doing at Saint-Omer, thereby rendering him (the witness) liable to criminal proceedings. Time and again the Lord Chief Justice pulled him up. "Mr Oates," he said, "you must not ask any such questions. What know I but by asking him the question you may make him obnoxious to some penalty? You must not ask any questions to ensnare him."

Jeffreys treated the prisoner with remarkable forbearance at this trial and gave him every latitude, in spite of his consistently

¹ Howell, *State Trials*, x, 1079.



JAMES II
Sir Godfrey Kneller
National Portrait Gallery



TITUS OATES
 Robert White
 National Portrait Gallery

impertinent behaviour. "Knowing the Chief Justice's unlimited passion," wrote Lord Ailesbury, who occupied a seat beside Jeffreys on the bench, "I expected he would show himself in his true colours; but I was greatly surprised at his good temper, and the more because such impudent and reviling expressions never came from the mouth of a man as Oates uttered."¹ Only when Oates accused one of the Crown witnesses, Lord Castlemaine, of showing malice against him did Jeffreys flare up:

"Hold your tongue! You are a shame to mankind."

"No, my lord," retorted Oates, "I am neither a shame to myself or mankind. What I have sworn is true, and I will stand by it to my last breath, and seal it, if occasion be, with my blood."

"It were a pity that it were not done with thy blood," remarked Jeffreys.

Oates protested that if there had been any miscarriage of justice the fault lay with the juries in the Popish Plot trials, when verdicts had, incidentally, earned the praise of the late Chief Justice Scroggs and of Jeffreys himself. "Alackaday!" replied Jeffreys. "How many times have we causes here in Westminster Hall wherein we have verdict against verdict, and yet no imputation to either of the juries which might give different verdicts upon different grounds. There was a notable case lately of my Lady Ivy's at this bar. We all thought upon the first trial that she had as good a title to the land as could be; all the judges and the counsel went away (I believe) satisfied with the jury's verdict for her. But when the cause came to be heard again we found all the witnesses to prove her title were guilty of notorious perjury, and the same persons that did believe before that she was in the right and the jury had done well, when they heard the second trial did believe she was in the wrong, and accordingly the second jury found it so. And we believe that last verdict to be good without any reflection on the credit of the first jury, because the evidence was as strong on her side then as it was afterwards against her. In these cases we give our opinions always according to the present testimony that is before us."

Oates went on to call several peers and members of the House

¹ *Memoirs* (1891), i, 138.

of Commons to testify as to his credit with Parliament. One peer, Lord Huntingdon, whom he had not subpoenaed, but whom he happened to see in court, he unwisely asked to testify on his behalf. "I do believe," said Lord Huntingdon, "most of the House of Peers have altered their opinion as to this man's credit and look upon his evidence, as I do, to be very false."

"Do you hear him, Mr Oates?" asked Jeffreys.

"No, my lord, I do not very well," answered the miserable Titus.

"Then, my Lord of Huntingdon," said the judge, "turn your face to the jury, and say what you said to us over again."

"Very well, my lord," said Oates, after listening to this mortifying repetition.

"There's your credit with the House of Lords, Mr Oates."

"My lord," Oates protested to the witness, "I called you in answer to my question as to somewhat that is past, and not to give your judgment how you are inclined to believe now."

"Nay, but with your favour," interposed the Lord Chief Justice, "it was to declare what opinion the House of Lords had of you, and he says very well; and that is in truth the same answer that must be given for the judges and the juries that tried the people upon your evidence."

"Well, my lord," said Oates, "I have done with my Lord of Huntingdon."

"And he has done with you, as I perceive," put in Mr Justice Wythens.

"Yes, truly," added Jeffreys sardonically. "Methinks ye shake hands and part very fairly."

Oates was so upset by the way things were going in the trial that he begged leave to retire, "for I am very weak and ill." Jeffreys allowed him to go, and then proceeded to deliver a most deadly summing up. "The pretended infirmity of his body made him remove out of court," he told the jury, "but the infirmity of his depraved mind, the blackness of his soul, the baseness of his actions, ought to be looked on with such horror and detestation as to think him unworthy any longer to tread upon the face of God's earth. You will pardon my warmth, I hope; for it is impossible such things should come before any honest man and not have some extraordinary influence upon him." Oates's impudent conduct in court, he

went on, made his blood curdle. As for the evidence given for the Crown, he invited the jury to accept it without hesitation. "And sure I am," he concluded, "if you think these witnesses swear true, as I cannot see any colour of objection, there does not remain the least doubt but that Oates is the blackest and most perjured villain that ever appeared upon the face of the earth."

As the jury were about to retire Jeffreys offered them a drink, but they did not think any artificial stimulus was necessary in arriving at their verdict. "No, my lord," answered the foreman, "we do not care for drinking." "Then we will stay for you," said Jeffreys. A quarter of an hour later they returned with the only possible verdict—guilty.

On the following day Oates was charged on the second indictment—that he had sworn falsely that Ireland had been in London on certain dates in August and September 1678.¹ The Crown evidence was conclusive to the effect that Ireland had been in Hertfordshire and Staffordshire on these dates. Oates must have seen that his game was up, but he persisted in trying to brazen out his case with the most amazing effrontery. "My lord," he said to Jeffreys, "there was a time when this was not to be believed."

"Ay, Mr Oates," replied the Lord Chief Justice, "we know there was a time when there were ignoramus juries, and things were believed and not believed as the humour went. What can you, Mr Oates, say to it? I must needs tell you, *prima facie* it is so strong an evidence that if you have any sense in the world you must be concerned at it."

"Not at all, my lord," said Oates, apparently unperturbed. "I know who they are and what is the end of it all."

"Upon my faith, I have so much charity for you as my fellow-creature as to be concerned for you," Jeffreys commiserated. But Oates was unmoved.

"It is not two straws' matter whether you be or no. I know my own innocency."

The Lord Chief Justice now spoke out his mind to the prisoner: "Thou art the most obstinately hardened wretch that I ever saw."

The jury again returned a verdict of guilty, and were warmly

¹ Howell, *State Trials*, x, 1227.

commended by Jeffreys for doing so. "I must tell you," he said to them, "you have given a verdict that becomes your honesty, integrity, and loyalty. And I declare in the presence of Almighty God, the Searcher of Hearts, that had I been of the jury I must have given the same verdict. Gentlemen, it is an honest and just verdict that you have given, and by it you have contributed, as much as in you lies, to vindicate the nation from the infamy it has so long lain under."

A week later the prisoner was brought up to receive the judgment of the court. Jeffreys and his brother judges would have liked, if they could, to have sentenced the perjured villain to death; but this they could not do, since perjury was not a capital offence. But they decided on a punishment which the Lord Chief Justice, for one, seems to have intended should be capital in effect. "When a person shall be convicted of such a foul and malicious perjury as the defendant here is," said Jeffreys, "I think it is impossible for this court as the law now stands to put a punishment upon him any way proportionable to the offence that has drawn after it so many horrid and dreadful consequences. We do therefore think it fit to inflict an exemplary punishment upon this villainous, perjured wretch to terrify others for the future."

The sentence was that he should pay a fine of 1000 marks (£666 13s. 4d.) on each indictment, that he should be stripped of his canonical habit, that he should stand in the pillory annually at certain specified times and places, that on May 20 he should be whipped by the common hangman from Aldgate to Newgate, that he should be similarly whipped on May 22 from Newgate to Tyburn, and that he should be imprisoned for life.

The flogging was carried out by the famous hangman Jack Ketch and his assistants with merciless severity. Dense crowds thronged the streets to see Oates take his punishment, and on the first day some of his sympathizers called out to Ketch, "Enough! Enough!" begging him to lay on the lash less vigorously. But Oates, brazen to the last, is said to have exclaimed, "Not enough, good people, for the truth—not enough!" However, it was not long before he felt he had had more than enough, for he began to bellow and shriek and finally fainted. He was revived, and the flogging continued amid intervals of swooning until the end of the route was

reached, and he was carried back half dead to Newgate. The King was asked to remit the remainder of the punishment, but he refused. "He shall go through with it, if he has breath in his body," said James. Accordingly, forty-eight hours later the wretch was brought out for the second instalment of his whipping. As he was too ill to walk at the cart's tail he was tied to a sledge and dragged in this way from Newgate to Tyburn. He is said to have been flogged with a whip of six thongs, and to have received in all over 2250 lashes.¹

It is remarkable that Oates did not expire under this frightful punishment, but he did not; and, although he remained concealed from the public gaze (except when he made his annual appearances in the pillory) until the Revolution, he seems to have recovered sufficient strength to write several defamatory pamphlets, and also to beget a bastard son by a bed-maker in prison.

III

Lord Keeper Guilford had prepared an elaborate speech for King James II to deliver at the opening of the new Parliament, but, to that virtuous peer's intense mortification, the sovereign disregarded it in favour of one of his own composition. Thereafter, in the words of his brother Roger, "as he was a person determined to be laid aside, he was not relied upon in anything, but was truly a seal-keeper rather than a Minister of State, and kept on for dispatch of formularies rather than for advice or trust." His health and spirits had latterly not been good, and from now on they suffered a steady deterioration. When he took his seat on the bench in Westminster Hall Guilford was so miserable that he had recourse to a nosegay of flowers which he used to bring into court in order to hide his dejected countenance. He ought, of course, to have taken the dignified line and have resigned now that his services were obviously of little value to James. But, acting from a sense of false pride and possibly from anxiety to keep the Great Seal out of the covetous grasp of Jeffreys, whom he rightly detected as his potential successor, he clung to his office with a pathetic and degrading obstinacy. He finally retired to his seat in Oxfordshire, taking the Great Seal with him.

¹ Luttrell, i, 343; *Dict. Nat. Biog.*, xli, 301.

Every possible device, and even affronts, were employed by Jeffreys and Sunderland and the other courtiers to induce the Lord Keeper to surrender the Seal. It was suggested to him that he should keep a whore, and, knowing his virtuous mode of living, they offered to provide him with one. Guilford declined the offer with a characteristic lack of humour, adding "that if he were to entertain a madam, it should be one of his own choosing and not one of their stale trumpery." Some time later the Lord Keeper was taken by his brother Sir Dudley North to see a curious sight. This was the first rhinoceros ever brought to England, and Guilford "came away exceedingly satisfied with the curiosity he had seen." But he was far from satisfied with the sequel. The story was put about—principally, it appears, by Sunderland, with the support of Jeffreys—that his lordship had gone for a ride on the animal, "than which," observed Roger, "a more infantine exploit could not have been fastened upon him." To make matters worse, his brother Dudley laughed uproariously when he heard the story, and did not contradict it. "And so it passed," added Roger, "and the noble Earl of Sunderland, with Jeffreys and others of that crew, made merry and never blushed at the lie of their own making, but valued themselves upon it as a very good jest." ¹

Meanwhile Catholic vengeance was claiming further victims. The trial of Titus Oates was followed in the King's Bench by that of Thomas Dangerfield, whose criminal association with Mrs Cellier in the fabrication of the Meal-tub Plot has already been described. He was charged with libelling the King, when Duke of York, in a published *Narrative*, in which he asserted that the Duke "had hired him to kill the late King Charles." We are told that during the trial he began to reflect on certain honest men, but was sharply reproved by Jeffreys, "which was observed to put him a little out of his Newgate rhetoric." Dangerfield was a thorough rascal with a bad criminal record, but notwithstanding all this he probably did not deserve the unfortunate fate which awaited him. He received a similar sentence to Oates; and, although the flogging does not appear to have been inflicted with the severity which the Doctor suffered, it terminated fatally. He was being conveyed in a coach along Holborn at the conclusion of the second instalment

¹ *Lives*, i, 338, 346, 355, 365, 367.

of his punishment when he was accosted by a Catholic barrister of Gray's Inn, named Frances. "How now, friend!" said Frances to him. "Have you had your heat this morning?" Dangerfield answered with a string of oaths, calling his tormentor "son of a whore" and worse. Frances lifted a cane, which he had with him, intending to strike Dangerfield on the head, but, the coach lurching forward at that moment, the point of the cane went into his eye. The wound proved fatal, and Dangerfield died the next day. Frances was arrested, tried for murder by the Recorder at the Old Bailey, and convicted. He should properly have been found guilty, if anything, of manslaughter, but the King refused to interfere with the sentence passed on his co-religionist, and Frances was duly executed.¹

But more reputable individuals than Oates and Dangerfield were to suffer from the accession of the new monarch. The persecution of the Nonconformists, which had been proceeding in the previous reign, was carried on with increased rigour under James II. On the same day as Dangerfield was tried the most learned and saintly of the Nonconformist divines, Richard Baxter, was brought before Jeffreys in the Guildhall, also on a charge of libel. The charge formulated was that Baxter in a critical work which he had written on the New Testament had covertly attacked the bishops and rulers of his own day. The information contained a series of clever innuendoes, which gave certain passages in his exposition a plausible, though unjustified, meaning. He was now a decrepit old man, broken in health, but he still had a numerous following of sympathizers. Throughout the proceedings against him, if we can believe the dignified but only surviving accounts of the trial supplied by his friends, Jeffreys treated him in the most shameless and insulting fashion, refusing him further time to prepare his defence. "I will not give him a minute's time more to save his life," said the Chief Justice to his counsel, who made the application. "We have had to do with other sorts of persons, but now we have a saint to deal with; and I know how to deal with saints as well as sinners. Yonder stands Oates in the pillory"—pointing in the direction of New Palace Yard, where Oates was at that moment undergoing a portion of his

¹ Howell, *State Trials*, x, 505; Luttrell, i, 351.

punishment—"and he says he suffers for the truth. So says Baxter; but if Baxter did but stand on the other side of the pillory with him I would say two of the greatest rogues and rascals in the kingdom stood there."¹

No sooner had he taken his seat on the bench in the Guildhall than the Lord Chief Justice was seen from his appearance to be in a furious temper—his face ablaze, so it has been said, with anger and brandy. Wallop, one of Baxter's counsel, tried to say a word for his client. "Mr Wallop," said Jeffreys, interrupting him, "I observe you are in all these dirty causes; and were it not for you gentlemen of the long robe, who should have more wit and honesty than to support and hold up these factious knaves by the chin, we should not be at the pass we are at." Pollexfen, who endeavoured to cite canonical authority for the "long prayers" which it was alleged the defendant had frequently repeated, fared no better. "No, no, Mr Pollexfen," replied the judge, "they were long-winded extemporaneous prayers such as they used to say when they appropriated God to themselves—'Lord, we are thy people, thy peculiar people, thy dear people,' etc." He then lifted up his eyes, clenched his hands, and, speaking through his nose, affected to mimic the way in which, he said, the Dissenters were accustomed to pray. Pollexfen then reminded Jeffreys that the defendant had actually been offered a bishopric by Charles II. "Ay, we know that," retorted the Lord Chief Justice, "but what ailed the old stockowl, unthankful villain that he could not conform—was he better or wiser than other men? He hath ever since been the spring of the faction; I am sure he hath poisoned the world with his linsey-woolsey doctrine."

Such was Jeffreys' invective that an onlooker in court thought that the Judge had gone stark, staring mad. "This one old fellow," said Jeffreys, "hath cast more reproach upon the constitution and excellent discipline of our Church than will be wiped out this hundred years; but I will handle him for it, for, by God, he deserves to be whipped through the city!" Baxter was further described by Jeffreys as "a whining, hypocritical fellow," "a factious, snivelling Presbyterian," and "a rascal." "Come, you, what do you say for yourself, you old knave?" the Judge addressed him. "Come, speak up.

¹ Baxter, *Autobiography*, ed. Thomas (1925), p. 257 *et seq.*

What doth he say? I am not afraid of you for all the snivelling calves that are got about you." But after Baxter had spoken a few sentences Jeffreys checked him: "Richard, Richard, dost thou think we'll hear thee poison the court? Richard, thou art an old fellow, an old knave; thou hast written books enough to load a cart, every one as full of sedition, I might say treason, as an egg is full of meat. Hadst thou been whipped out of thy writing trade forty years ago, it had been happy. Thou pretendest to be a preacher of the Gospel of Peace, and thou hast one foot in the grave: it is time for thee to begin to think what account thou intendest to give. Leave thee to thyself, and I see thou'lt go on as thou hast begun; but, by the grace of God, I'll look after thee."

The other counsel who represented Baxter were similarly reproved when they spoke, and Williams, who also had a brief for the defence, saw it was hopeless to say anything, so he wisely kept silent. Jeffreys then summed up against the defendant in a ferocious harangue.

"Does your lordship think any jury will pretend to pass a verdict upon me upon such a trial?" asked Baxter, when the Judge had finished.

"I'll warrant you, Mr Baxter," replied Jeffreys. "Don't you trouble yourself about that."

The jury did not even trouble to retire, but after a short consultation among themselves found the prisoner guilty.

"My lord," said Baxter, as he was leaving the court, "there was once a Chief Justice who would have treated me very differently." He alluded, of course, to the Puritan Sir Matthew Hale, though he apparently did not do so with the knowledge that this judge had been a friend of Jeffreys in his youth.

"There is not an honest man in England but what takes thee for a great knave," was the Lord Chief Justice's reply.

It is said that Jeffreys would have liked to have had the Nonconformist whipped, but Baxter's numerous friends were able to bring pressure to bear upon the Government, which took his age and record into consideration. The Chief Justice probably received a hint to be moderate when the offender came up for sentence. At all events, Baxter was fined 500 marks, with imprisonment in default of payment, and nothing further was said of whipping him.

There is no doubt that during this trial the Chief Justice was suffering agonies from the stone; but, although it explains his singular conduct on the bench, it can hardly be said to justify it. From henceforward his character and talents are marked by a steadily increasing deterioration in quality.

IV

While Jeffreys was busying himself with Oates, Dangerfield, and Baxter the Whig exiles on the Continent were preparing to launch an attack on the throne of James II. About the middle of May the outlawed Earl of Argyll landed in the Highlands, where he raised the standard of rebellion, and a few weeks later Monmouth, with a party of over eighty supporters, including the treacherous Lord Grey of Warke, managed to elude the vigilance of the Channel fleet and dropped anchor off the coast of Dorset. The two leaders never succeeded in establishing contact with each other, since Argyll was captured not many days after Monmouth went ashore at Lyme Regis. Monmouth's expedition did, however, develop for a short time into a campaign as the yeoman farmers, peasants, and artisans of Dorset and Somerset flocked to his colours.¹ The campaign began with a declaration in which the misguided Duke invited the support of the people of the countryside, and made the astonishing assertions that his uncle James had caused the Great Fire of London, strangled Sir Edmund Godfrey, cut the throat of the Earl of Essex, and poisoned the late King, Monmouth's father, whose legitimate son he further declared himself to be. As soon as news of this important declaration reached London Parliament, which was then sitting, lost no time in passing an Act of Attainder upon its author.

The Whig gentry in the West naturally held aloof from giving their support to such an incautiously worded document as this. Nevertheless, among the lower and middle classes, who regarded the handsome Duke as the champion of their liberties and of

¹ The deservedly famous account of Monmouth's rebellion given by Macaulay in his *History* (Chapter V) should be studied alongside Sir Charles Firth's *Commentary on Macaulay's "History of England"* (1938) (pp. 283-285), and for the military operations the biographies of Marlborough by Lord Wolseley (1894) and Mr Winston Churchill (1933) should be particularly consulted. See also Ranke's *History* (1875), vol. iv, and the lives of Monmouth by George Roberts (1844) and Allan Fea (1902).

the Protestant religion, he received considerable support as he advanced across country. At Taunton, a noted Puritan stronghold and the prosperous seat of the woollen manufacture, he was proclaimed King in the market-place, and twenty maidens of the town presented him with a silk-embroidered banner, made, so it is said, from their petticoats; and also a pocket Bible. "I come," he said, thanking the maidens, "to defend the truths contained in this book, and to seal them, if it must be so, with my blood."¹

Monmouth gathered about him a rustic army numbering almost six thousand, and established himself at Bridgwater, which he made his headquarters. Hence he marched on Bristol, but when within a few miles of the city an advance-guard of his troops was attacked by a body of the King's forces and put to flight. Somewhat depressed in spirits, Monmouth returned to Bridgwater. Meanwhile the local militia regiments, who had been called out against the rebels, were being rapidly reinforced by several divisions of the Regular Army which had been sent down from London. These troops were nominally under the command of the Earl of Feversham, a Frenchman and a friend of the King's, whose accident in assisting in putting out the fire in the Temple in 1679 will be remembered.² As a result of this accident he had been trepanned, and this operation had not improved his command of either the English language or the English troops. He spent most of his time in eating and drinking and sleeping, so that the real direction of the campaign was left in the capable and energetic hands of his lieutenant, the recently created Lord Churchill, who had served his military apprenticeship under Feversham's uncle, the famous Marshal Turenne.

The tower of Bridgwater Church was reputed to be the highest in Somerset, and from its summit an observer brought word to the rebel leader that the King's forces could be seen encamped in what were then the marshy wastes of Sedgemoor. Summoning his principal followers together, Monmouth determined upon a surprise night attack. Many of the rebel rank and file were rustics, and were armed only with scythes fixed to the ends of wooden poles. Remarkable as it may appear, this daring and difficult operation nearly succeeded. On July 6

¹ Fea, *Monmouth* (1902), p. 246.

² See above, p. 71.

Feversham was, as usual, in bed when the alarm was given, and for a time there was considerable confusion in the loyalist ranks. But the attacking force was necessarily scattered, and eventually, when the King's troops had rallied under Churchill, their superior strength and knowledge began to tell, especially when a large body of the rebels were trapped behind a ditch which they were unable to cross. When dawn broke the rebels were in flight. They were quickly rounded up and disarmed. A number of them were executed on the spot. Feversham, who had been accustomed to scenes of devastation in France, ordered a wholesale erection of gibbets. Other executions were carried out at the orders of one of his subordinate officers, the notorious Colonel Percy Kirke,¹ whose "lambs," as the men of his regiment were called, summarily hanged a number of the rebels caught in arms, thereby striking terror into the hearts of the country people.

Monmouth and Grey were captured in the New Forest disguised as peasants, Monmouth actually being found hiding in a ditch. Both men were brought up to London under guard and lodged in the Tower. Both requested, and were granted, interviews with James, and begged that their lives might be spared on condition that they revealed the details of the rebellion. They were brought to the King in Chiffinch's room in Whitehall, and Monmouth, with his hands behind him and suffering from a cold, behaved in the most abject and submissive manner. However, the King was inexorable. When James had gone the Duke, who was in the worst of spirits, complained of his cold, and Grey cheerfully assured him that his royal uncle would shortly provide an excellent cure. Grey could, indeed, afford to be cheerful, for his worthless life was spared; but for the luckless Monmouth, who had dared to proclaim himself King, there could be no pardon. Since he was already attainted it was unnecessary to bring him before Jeffreys for the formality of a trial, and the warrant for his execution was signed forthwith. He was beheaded on Tower Hill two days after his arrival in the gloomy fortress. "Here," he said to Jack Ketch, the

¹ The cruelties of this officer have been grossly exaggerated. It was said, for example, that he hanged a hundred prisoners in a week. He returned to London at the end of August, and was severely reprimanded both by Jeffreys and Sunderland for liberating prisoners without permission and granting pardons before the rebels had been brought to trial. (Fea, p. 382.)

executioner, "are six guineas for you. Do not hack me as you did my Lord Russell." Ketch was so unnerved by this request that he bungled the business badly, and after several unsuccessful attempts to sever Monmouth's head from his body he threw the axe away, saying, "I cannot do it. My heart fails me." He was induced by the sheriff to take up the axe, but his efforts still proved ineffective. In the end a knife had to be used to separate the head from the shoulders. Many tears were shed, and handkerchiefs were eagerly dipped in the blood which trickled from the scaffold, for Monmouth was regarded by many as having died a martyr to the Protestant cause.¹

The King's orders to the loyalist troops in the West were to capture as many fugitive rebels as possible and to hand them over to the civil authorities for trial in due course as traitors. For this purpose a special Commission of Oyer and Terminer and General Gaol Delivery was issued to the Lord Chief Justice and four of his brother judges, so as to facilitate the trials of the large number of rebels who were now being taken into custody. The four other judges besides Jeffreys whose names appeared in the Commission were Chief Baron Sir William Montagu, Sir Robert Wright of the Exchequer, Sir Francis Wythens of the King's Bench, and Sir Creswell Levinz of the Common Pleas. Such a large Commission was necessitated by the fact that there were over 2600 prisoners against whom the Grand Juries of Somerset, Devon, and Hampshire were waiting to present true bills.

v

The setting out of the Commission was delayed for several weeks through the Lord Chief Justice being obliged to make a long visit to Tunbridge Wells, where he had taken rooms in a house "at five pounds ye weeke" for the express purpose of being able to drink the waters.² He hoped that a course of these waters would substantially alleviate, or even possibly

¹ Luttrell, i, 353; Macaulay, ii, 618; Fea, pp. 324, 342.

² Said to have been situated on Mount Ephraim, overlooking the Common, and to have been known long afterwards as Chancellor's House (*Notes and Queries*, clvi (1929), 466). "This place is very full of company," wrote John Verney from Tunbridge Wells at this time, "so that lodgings are very hard to be gotten and consequently dear, as are all provisions here" (*Verney Memoirs*, iv, 354). See also the *Law Journal* (lxviii (1929), 428) for an account of his expenses on this visit by Miss M. Melville Balfour. The manuscript bill has recently been presented by Miss Balfour to the Bridgwater Museum.

effect a cure of, the painful disease which now seemed to have got a thorough grip of his constitution. He was not without company, for he had his brother James with him, and the accounts of his expenses show that besides drinking the waters he and his establishment consumed "86 gallons of strong beere."¹ His brother, however, seems to have annoyed him by getting involved in an unpleasant altercation with a coachman, in which he narrowly escaped being knocked down.²

When the middle of August had passed Jeffreys realized that he could delay no longer, so he came up to town and met the other judges at his chambers on the 20th. Here they decided to accept an invitation to stay with the Bishop of Winchester, who had lent his carriage horses to drag the King's cannon at Sedgemoor. They accordingly spent the night of the 24th with the Bishop at Farnham, and on the following day the Lord Chief Justice opened the Commission in the Great Hall of the castle in Winchester.³ It took the judges two days to get through the calendar here, though there was only one prisoner charged with treason. This was an old woman who had formerly held conventicles in her house, Lady Alice Lisle, and she was tried last, being brought up late in the afternoon of the 27th.⁴

¹ The cost of the beer was only £2 10s. 2d.

² *Verney Memoirs*, iv, 353.

³ Roger North states that Jeffreys also received a military commission with the rank of General (iii, 341), but this is untrue. The judges were, however, escorted on the circuit by a body of Dragoons, though these were not, as stated by Ailesbury in his *Memoirs* (i, 122), commanded by Kirke, who was not at that time in the neighbourhood.

⁴ Howell, *State Trials*, xi, 298. The other original sources of information concerning the Bloody Assizes consist of lists of presentments, official returns to the Treasury, warrants to sheriffs, extracts from contemporary newsletters, and numerous contemporary 'Histories,' 'Assize Books,' and 'Martyrologies,' of which the latter must be received with the greatest caution. For considered accounts of the Assizes which take these authorities into consideration see particularly F. A. Inderwick's *Sidelights on the Stuarts* (1888), containing extracts from the gaol books of the Western Circuit, and also J. G. Muddiman's *The Bloody Assizes* (1929), where, among other documents, the Judges' Lists of rebels tried and sentenced are reprinted with additional information from the Treasury Papers in the Public Record Office. The lists of presentments by the Grand Juries of Dorset, Devon, and Somerset are preserved in the British Museum (Add. MSS. 31957); they are the subject of an excellent article ("The Rebels in the Duke of Monmouth's Rebellion") by W. Bowles Barratt in the *Proceedings of the Dorset Natural History and Field Antiquarian Club* (v, 99). Mr Barratt purchased this valuable manuscript, missing from the Public Record Office, at an auction in 1875, and presented it to the British Museum. See also Macaulay, G. Roberts (*Monmouth* (1844)), and Fea; and A. L. Humphreys' useful paper, "Some Sources of History for the Monmouth Rebellion and the Bloody Assizes," published in the *Proceedings of the Somersetshire Archeological and Natural History Society* (N.S., xviii, Part 2, 312).

Lady Lisle was at this time a widow of about seventy or more. Her husband had been a member of Cromwell's House of Lords; hence the courtesy title by which she was commonly known. John Lisle had, in fact, been one of the Protector's staunchest supporters, and he had taken a prominent part in the trial of Charles I. At the Restoration he had been obliged to flee to Switzerland, where he was killed a few years later, in somewhat suspicious circumstances, while on his way to church in Lausanne. Since then his widow had been living a retired life at Moyles Court, the house near Ringwood which she had inherited from her father, Sir White Beckenshaw. During Monmouth's rebellion she had been on a visit to London, but returned to her house in the country immediately after Sedgemoor. There she received a letter from a well-known Dissenting minister named John Hickes. He asked her whether she would give him lodging, together with a friend of his. But the truth was that Hickes had fought in the rebellion and was now in hiding for fear of his life. The letter was delivered by a Nonconformist baker from Warminster, James Dunne, who had been concealing Hickes and his companion—another of Monmouth's supporters called Richard Nelthorpe, who had actually been outlawed. Dunne naturally welcomed the opportunity of getting rid of his embarrassing guests, and he was considerably relieved when Lady Lisle agreed to shelter them.

Dunne, who had experienced difficulty in finding his way from Warminster, picked up a labourer called Barter, whom he engaged to guide him to Moyles Court on each of the journeys. He foolishly disclosed to Barter the fact that Hickes and Nelthorpe were rebels, with the result that Barter, as soon as the journey was complete and the three men safe at Moyles Court, went to Colonel Penruddock, a neighbouring magistrate, and told him that the suspected Lady Lisle was harbouring two rebels. By dawn on the following day Colonel Penruddock had the house surrounded by his soldiers, and knocked on the hall door, demanding admittance in the King's name. After some delay and repeated denials on the mistress's part that there was anyone concealed in the house a search was ordered. Hickes and Dunne were discovered underneath some rubbish in the malt-house, and Nelthorpe was found hiding in the

thickness of a wall near one of the chimneys. The colonel thereupon arrested the three men and their hostess, and carried them off to the Salisbury gaol.

Lady Lisle was charged with harbouring Hickes only, since the prosecution realized that it could not be proved that she knew Nelthorpe to be a rebel as well. The objection has frequently been advanced that at the time of Lady Lisle's trial Hickes, unlike his companion, had not been adjudged a traitor (as he afterwards was), and that Lady Lisle could not properly be convicted of sheltering him. It is doubtful, however, in the rather vague and uncertain state of the law on the subject at this time whether there was really any illegality in following the course which the Crown lawyers did, and which was adopted by Jeffreys—that is, instead of waiting until Hickes's trial and conviction, to proceed immediately with the trial of Lady Lisle and to produce witnesses there to prove that the Dissenting minister had taken up arms against the King, and that Lady Lisle knew of this.¹ The eminent Whig Henry Pollexfen was briefed as leading counsel for the Crown, probably because he was the leader of the Western Circuit,² and it is significant that this lawyer, who had such a short time previously been stigmatized in open court by Jeffreys as "a patron of faction," should have acted on the assumption that the proceedings against Lady Lisle were perfectly legal, and should not have made any kind of protest. Whatever has been said on this technical point, the fact remains that Lady Lisle was one of the very few people of quality who were accomplices in Monmouth's rebellion, and the authorities wished to lose no time in making an example of her.

On account of her age the prisoner was allowed to be seated during the proceedings, and as she was somewhat hard of hearing the court instructed a man to stand beside her and repeat what was said. In this way she heard Hickes's treason proved by a number of witnesses who had been captured from Monmouth's troops and testified to the position of consequence which he occupied in the rebel ranks. The next witness called

¹ Cf. the opinion of Sir James Stephen in his *History of the Criminal Law* (i, 413): "I think this is another of the numerous instances in which there really was no definite law at all, and in which the fact that a particular course was taken by a cruel man for a bad purpose has been regarded as proof that the course taken was illegal."

² Sir William Holdsworth, *History of English Law* (1936), vi, 561.

by the Crown against Lady Lisle was the Nonconformist baker Dunne, who had consented, with considerable reluctance, to turn King's evidence on condition that his life was spared. In calling him Pollexfen informed the court that he was a very unwilling witness, and requested that he should be examined "a little the more strictly." This was equivalent to the modern request to treat a witness on one's own side as hostile in order to cross-examine him.

"You say well," said Jeffreys, and then, turning to Dunne, the Lord Chief Justice went on, "Hark you, friend, I would take notice of something to you by the way, and you would do well to mind what I say to you. . . . I would not by any means in the world fright you into anything or any ways tempt you to tell an untruth, but provoke you to tell the truth and nothing but the truth. That is the business we come about here. Know, friend, there is no religion that any man can pretend to can give a countenance to lying, or can dispense with telling the truth. . . . For I tell thee God is not to be mocked, and thou canst not deceive Him, though thou mayst us. But I assure you if I catch you prevaricating in any the least tittle (and perhaps I know more than you think I do . . .) I will be sure to punish every variation from the truth that you are guilty of."

Jeffreys might safely here have left the work of cross-examining Dunne to Pollexfen, for the man was an unconvincing liar, but he preferred, apparently, to cross-examine the baker himself. Dunne was hoping that what he said would be insufficient to convict the prisoner, and the result was that he concocted, out of his rustic imagination, a tale that would not hold water when subjected to the Chief Justice's acid test. He involved himself in falsehood after falsehood, and when exposed by the contradictions of himself and other witnesses all he could say was, "I am quite cluttered out of my senses; I do not know what I say." "To tell the truth," replied Jeffreys, glowering fiercely at him, "would rob thee of none of thy senses, if ever thou hadst any."

If we can believe the unofficial, but only surviving, report of this trial Jeffreys lashed the unfortunate baker with his tongue. "You impudent rascal," "you blockhead," "lying Presbyterian knave," "thou wicked wretch," "thou art a strange,

prevaricating, shuffling, snivelling, lying rascal," were some of the expressions the Judge is said to have used. "Hold the candle to his face," Jeffreys directed the usher, "that we may see his brazen face."¹ He persisted for a while in his story that neither he nor Lady Lisle knew that Hickes and Nelthorpe were rebels, but when Barter swore what Dunne had told him the wretched man broke down and confessed he had been lying. Colonel Penruddock then told the court of his search of Moyles Court and its result, explaining how the accused had denied that Nelthorpe was in her house.

"My lord," interrupted Lady Lisle, "I hope I shall not be condemned without being heard."

"No, God forbid, Mrs Lisle," said the Judge. "That was a sort of practice in your husband's time; you know very well what I mean. But God be thanked it is not so now. The King's courts never condemn without hearing."

This reference to the late John Lisle's having presided over the Cromwellian High Court of Justice which condemned unheard a London clergyman who questioned the legality of the court was, of course, most improper—that is, assuming the remark to have been made at all, for the report from which it is taken is not altogether trustworthy. However, in his summing up Jeffreys did remind the jury that anything the prisoner or her husband may have done in respect of the death of Charles I, or anyone else during that period, was not relevant to the present case. But in general his charge to the jury was against the prisoner, whose weak and unconvincing defence was that she took Hickes to be a Nonconformist preacher who was wanted by the authorities for preaching and nothing else. As for her repeated protests that she neither knew nor had ever seen the outlaw Nelthorpe before, Jeffreys pointed out that there was nothing in it, since she was indicted for harbouring Hickes and not Nelthorpe.

¹ In considering the coarse language which Jeffreys is alleged to have employed when addressing Dunne it is only fair to note that serious doubts have been cast upon the accuracy of this report. Writing in *Notes and Queries* (clv (1928), 149), Mr J. G. Muddiman points out that, unlike most of the other trials of the time, reports of which were first published contemporaneously, no account of Lady Lisle's trial appeared at the time; in fact, it was not until the publication of the first edition of the *State Trials* in 1719 that the report as we know it seems to have been printed. This writer attributes the report to the pen of Robert Blancy, a Whig barrister who disliked Jeffreys, and who, it is suggested, interpolated in his report oaths and other expressions which the Lord Chief Justice did not use.

As the jury was about to retire one of them said, addressing the bench, "Pray, my lord, some of us desire to know of your lordship in point of law whether it be the same thing, and equally treason, in receiving him before he was convicted of treason as if it had been after."

"It is all the same," replied Jeffreys. "That certainly can be no doubt; for if in case this Hickes had been wounded in the rebels' army, and had come to her house and there been entertained, but had died there of his wounds, and so could never have been convicted, she had been nevertheless a traitor."

When the jury were seen to retire the Lord Chief Justice is said to have shown impatience and to have said that "he wondered that in so plain a case they should go from the bar." However that may be, the jury appeared somewhat reluctant to convict. They did not, as one Whig historian would have us believe, bring her in three times not guilty, but they did come back after half an hour and express doubt as to Lady Lisle's knowledge that Hickes had served in the rebel army. Jeffreys replied that Dunne's evidence should be conclusive on this point. A quarter of an hour later they returned a verdict of guilty.

"Gentlemen," the Lord Chief Justice is reported to have said, "I did not think I should have had any occasion to speak after your verdict; but, finding some hesitancy and doubt among you, I cannot but say I wonder it should come about, for I think in my conscience the evidence was as full and plain as could be, and if I had been among you, and she had been my own mother, I had found her guilty."

As it was close on midnight the court adjourned to the following morning, when all the prisoners who had been convicted came up for judgment. Upon Lady Lisle the customary sentence of burning (the penalty for women convicted of high treason) was duly pronounced. But in her case the Lord Chief Justice had something further to say.

"Look you, Mrs Lisle, when I left his Majesty he was pleased to remit the time of all executions to me: that wherever I found any obstinacy or impenitence I might order the executions with what speed I should think best. Therefore, Mr Sheriff, take notice you are to prepare for the execution of this gentlewoman this afternoon.

"But withal I give you, the prisoner, this intimation: we that are the judges shall stay in town an hour or two; you shall have pen, ink, and paper brought to you, and if in the meantime you employ that pen, ink, and paper and this hour or two well (you understand what I mean) it may be you may hear further from us in deferring the execution."

The hint conveyed in these remarks was not (as several of Jeffreys' detractors have represented) that a bribe would be acceptable, but that her only hope for mercy lay in petitioning the King. Jeffreys respited her until September 2 to enable her to do this, but all James would permit was the alteration of the punishment from burning to beheading. In the afternoon of that day she was executed in Winchester. Her remarks on the scaffold, if she made any, have not been preserved. All that is known with any certainty is that she appeared "old and dozy and died without much concern."¹ That she was guilty of the capital crime with which she was charged there seems not the slightest doubt. But for his own reputation, and that of his Lord Chief Justice, the King would, in view of Lady Lisle's age and sex, as well as the charitable aspect of her treasonable act, have done better to reprieve her.

VI

From Winchester the judges proceeded to Salisbury, where they found another light calendar. This town was a loyalist stronghold, besides being somewhat outside the orbit of the rebellion. Six persons were found guilty of speaking seditious words. One of them, Stephen Moore, had said that "he would never go to church till Monmouth was King." Jeffreys sent him to church at once, but, with a touch of grim humour, ordered that he should have a whipping on the journey "from the end of the town to his parish church, and a second time from the farthestmost part of the city to the cathedral." The other five suffered a similar punishment, and in addition they all had to pay a fine of a mark (13s. 4d.) each. A man named Palmer foolishly accused a drummer in the King's army of having plundered his house. He was recognized as a rebel by several people in court, and when they proved him to have

¹ Muddiman, p. 28.

been with Monmouth's forces he was sent forward for trial to Taunton, where his folly was to result in his transportation to the West Indies.

The judicial cavalcade moved on to Dorchester, and here, on Saturday, September 5, the real business of the assizes began. During the customary assize sermon in the parish church the Lord Chief Justice is said—probably without foundation—to have grinned savagely when the preacher touched on the subject of mercy. Later in the morning he took his seat in court, using a chair which can still be seen,¹ and thirty men pleaded not guilty to the charge of high treason. With one exception they were all convicted and ordered for execution two days later. A number of them had been captured with arms in their hands, and others were taken suffering from wounds received in action. The evidence was short, and their guilt clear. In order to shorten the proceedings, Pollexfen, apparently with the approval of Jeffreys and other judges, sent a message by the hand of the Deputy Clerk of the Assize to Dorchester Gaol to the effect that any prisoner who pleaded not guilty and was subsequently convicted might expect no respite. Only those, it was hinted, who pleaded guilty and threw themselves on the King's mercy might expect any consideration from the Crown. The result of this step was that sixty-eight prisoners put in their pleas of guilty later in the day. Whig writers have, without foundation, accused Jeffreys of causing the message to be sent to the gaol; but, whether he approved of it or not, the fact remains that it originated with Pollexfen. Such a proceeding was certainly improper, if not illegal, but in the circumstances the Crown lawyers saw no other method of getting through a calendar of 2600 prisoners in the five weeks which they had at their disposal before the Michaelmas term began in London.

The journey over the bad roads from Salisbury to Dorchester had brought on another acute attack of the stone, so that when Jeffreys retired to the judges' lodgings² that night, in order to compose an account of the day's proceedings for the information of the King, he felt so ill that he had to dictate it to his

¹ This chair is preserved in the Dorchester Town Hall.

² The house in which the Commission lodged in Dorchester is still pointed out to the visitor. It is reported to be haunted by Jeffreys' ghost, which has been seen pacing restlessly along the path at the back which formerly connected the house with the old Assize Court. The latter is on the site of the present Antelope Hotel.

servant. He did, however, manage to pen a covering note to Sunderland, asking indulgence for his report ¹:

DORCHESTER

10 o'clock at night, 5th [September 1685]

I most heartily rejoice, my dearest dearest lord, to learn of your safe return to Windsor. I this day began with the trial of the rebels at Dorchester, and have dispatched 98; but am at this time so tortured with the stone that I must beg your lordship's intercession with his Majesty for the incoherence of what I have adventured to give his Majesty the trouble of, and that I may give myself so much ease by your lordship's favour as to make use of my servant's pen to give a relation of what has happened since I came here.

My dearest lord, may I ever be tortured with the stone if I forget to approve myself,

My dearest lord,

Your most faithful and devoted servant

JEFFREYS

For God's sake make all excuses, and write at leisure a word of comfort.

On the very day that Jeffreys wrote this letter an event occurred in Oxfordshire which materially affected his fortunes. This was the death of Lord Keeper Guilford and the consequent disposition of the Great Seal. Next day the dead man's brothers, Roger and Dudley North, rode over to Windsor with the Seal; and there they handed over "that pestiferous lump of metal," as Roger called it, to his Majesty's keeping. This important news took three days to reach the Chief Justice, but when he heard it he lost no time in writing to Sunderland for that nobleman's "patronage and protection" with a view to obtaining "that station that, next to his Majesty, I will to eternity owe to your lordship's favour." The King had already spoken to Sunderland about Jeffreys in this connexion, so that the Chief Justice felt that the highest prize in a lawyer's career was at last within his reach. "I heartily beseech your lordship," he concluded, "to render my most humble duty and thankfulness to his Majesty for his most gracious thoughts of me, and assure him I will to the utmost approve myself his most loyal and faithful servant."

Meanwhile the grim business of the assizes proceeded apace. The first batch of rebels suffered on Monday, September 7—

¹ *S.P., Jac., Dom.*, 1685, 30-31 (Public Record Office).

in all thirteen out of the twenty-nine ordered for execution. It appears that Jack Ketch and his assistant, a butcher named Pascha Rose, could not manage more than that number, since there was considerable labour involved, not merely in hanging the culprits, but in the subsequent dissection, boiling, and distributing of their quarters throughout the neighbourhood which was the barbaric accompaniment of executions for high treason. Gallows were set up at Lyme Regis, Bridport, Melcombe Regis, Weymouth, Sherborne, Poole, and Wareham; and over sixty condemned rebels were divided among these places for execution. In all more than 250 were condemned to death at Dorchester, though less than a third of this number actually suffered the extreme penalty.

Many others were sentenced to transportation and lesser punishments. A man called Holleday, who pleaded guilty to having acted as a guide to the traitor Lord Grey after Sedgemoor, was ordered to be whipped through Dorchester the same afternoon, and the next market-day through Shaftesbury. A whipping was also the lot of a woman who, on receiving a demand for duties on ale which she brewed, told the excise officers that "she would pay no more excise till the Duke of Monmouth was King of England." William Wiseman, a young barber's apprentice of Weymouth, who was convicted of publishing a seditious libel by publicly reading Monmouth's proclamation to a number of people in that town, received the more severe sentence of a whipping through Dorchester and the other nine market towns of the county. It was not carried out in full, although the first whipping was administered so lightly that a clergyman of the Church of England called Blanchard is said to have made a protest to the authorities which led to such a rigorous application of the next instalment that the young man nearly died. "You talk of the cruelties of the Popish priests," the compassionate gaoler is said to have remarked to the sadistic parson, "but commend me to a Church of England priest for cruelty. They are like the country justices who won't believe a man is burned in the hand unless they can see a hole through it."¹

Among the others convicted at Dorchester was the Whig pamphleteer John Tutchin, who, with several other journalists,

¹ Muddiman, pp. 141-142, 220.

subsequently wrote a partial and extremely inaccurate account of the circuit known as *The Western Martyrology, or Bloody Assizes*. Under the assumed name of Thomas Pitts he pleaded guilty to the crime of spreading false news, his words being to the effect that "Hampshire was up in arms for the Duke, that he had seen both horse and foot on the hills near Christchurch, and that Argyll was in great strength and on the march within sixty miles of London." He was sentenced to pay a fine of five marks or suffer imprisonment, and to be whipped once—not an over-severe punishment when it is realized that he must have known the news to be untrue and that its dissemination would probably involve many a West Country lad in rebellion and perhaps ultimate death. This sentence, which can be seen clearly recorded in the gaol book, was subsequently exaggerated by Tutchin himself to a whipping every year for seven years through every market town in Dorset, which Tutchin makes the Clerk of the Assize protest to Jeffreys "reaches to a whipping about once a fortnight, and he's a very young man." "Ay," the Lord Chief Justice is alleged to have replied, amid the tears of all the ladies in the court, "he's a young man, but he's an old rogue; and all the interest in England shan't reverse the sentence I have passed on him." This story is, of course, a complete fabrication, and it is regrettable that it should have been accepted as true by Macaulay and subsequent writers. As a matter of fact, Tutchin never received his flogging at all, since he fell ill with smallpox in prison, and that part of his sentence was consequently remitted.

The next assize town was Exeter, which the judges reached on September 12. Here the calendar was comparatively light, and was disposed of in one day, for Monmouth's rising had only penetrated the fringe of Devon. Twenty-one were sentenced to death for treason, of whom nineteen pleaded guilty. Twelve were executed.

Taunton was the next stage in the judges' dreaded journey. Monmouth's chief stronghold naturally provided a holocaust. Those in custody pleaded guilty in scores, and as a result over five hundred were sentenced to death in the Great Hall of the castle for their part in the rebellion.¹ Of these 139 were

¹ The Somerset County Museum, which includes a fine collection of relics of Sedgemoor and the Bloody Assizes, is now housed in Taunton Castle. These

ordered for execution, but it appears that only about two-thirds of this number actually suffered. All the rest of those sentenced were either pardoned, transported, or else died of smallpox, which was then raging in the country prisons. Only three were executed at Taunton during the assizes, the reason being that the Lord Chief Justice deferred signing the warrant for the dispatch of the rest until he had submitted the list of condemned to the King.

On leaving Taunton the judges broke into two parties. Jeffreys and Wright went to Bristol, while the other three proceeded to Wells. No rebels were tried at Bristol, but the Lord Chief Justice made a fearful impression upon the inhabitants by publicly humiliating the mayor and several other influential citizens for kidnapping children and others and selling them into slavery in the West Indies. The mayor usually occupied a seat on the bench during the assizes, "accoutered with his scarlet and furs," and, according to Roger North, the Lord Chief Justice turned on him "and gave him all the ill names that scolding eloquence could supply." He made the mayor quit the bench, and "go down to the criminal's post at the bar," where the unfortunate man "pleaded for himself as a common rogue or thief must have done." After a sound rating Jeffreys admitted the mayor, and others charged with him, to bail. "I think this city worse than Taunton," he wrote the same day (September 22) to Sunderland,

but, good my lord, though harassed with this day's fatigue and now mortified with a fit of the stone, I must beg leave to acquaint your lordship that I this day committed Mr Mayor of this city, Sir William Hayman, and some of his brethren, the aldermen, for kidnappers, and have sent my tipstaff for others equally concerned in that villainy.

Jeffreys went on to ask Sunderland to see that the King should not be surprised into a pardon for any man, "though he pretend much to loyalty," until he had himself returned and could kiss his Majesty's hands. "Taunton and Bristol and the county of Somerset too," he concluded,

shall know their duty both to God and their King before I leave them. I purpose to-morrow for Wells, and in a few days don't

relics have been described by the Curator, Mr H. St George Gray, in the *Connoisseur*, v (1903), 116, 1 (1918), 95; see also Fea, *passim*.

despair to perfect the work I was sent about; and if my royal master would be graciously pleased to think I have contributed anything to his service I am sure I have arrived at the height of my ambition.¹

His Majesty is said to have responded to this communication by writing to Jeffreys "requiring him to dispatch the business before him that he might come and take the Seals, for he [the King] was forced in the meantime to be Chancellor himself."²

VII

Wells, where Jeffreys and Mr Justice Wright rejoined their three colleagues, was the last town visited by the dread judicial Commission. Like Taunton, this town had been ardent in the support of Monmouth, and it now had to pay a proportionate penalty for the misdoings of its inhabitants. Of 542 prisoners charged with treason only one pleaded not guilty—a man called Mangell, who was tried, convicted, and executed on the same day. The remainder, who pleaded guilty, were sentenced at the conclusion of the assizes. Of this number ninety-three were ordered for execution, but, in point of fact, considerably less than this figure, as was the case with those sentenced at Taunton, went to the gallows. A few days later Jeffreys and the other judges returned to London.³ As he was leaving, on September 26, the Lord Chief Justice signed the warrant to the sheriff of Somerset for the execution of the 229 of those convicted at Taunton and Wells whom the King had decided must die.

We are now in a position to arrive at a considered estimate of the numbers executed as a result of the so-called "Bloody Assizes" which Jeffreys headed as Lord Chief Justice. Macaulay puts the total number of executed at 320, Burnet says 600,

¹ North, *Lives*, i, 284–286; *S.P., Jac., Dom.*, 1685, 30/1. The proceedings against the mayor and the other citizens of Bristol were subsequently dropped (North, *Lives*, ii, 197).

² L. Echard, *History* (1725), p. 1068. It is uncertain whether James actually wrote such a letter, but these were undoubtedly his sentiments at the time.

³ The expenses of entertaining the judges, which came to £19 5s. 7d., have been published from the Wells municipal records in the *Proceedings of the Somersetshire Archaeological and Natural History Society* (v, Part II, 16–17). Nearly four hogsheads of ale, besides "5 duz. of October beere," were consumed by the party. Another of the items reads, "Paid for Jo. Johnson, 4 days and 4 nights attendance on My Lord Jeffries his coach horses, 6s."

and other Whig writers assert that as many as 700 died on the gallows, many of whom were not given "a minute's time to say their prayers."¹ In the light of the Gaol Books and the official returns to the Treasury in the shape of Judges' Lists,² unfortunately ignored by Macaulay and the other writers, these figures are seen to be somewhat wide of the mark. In the few counties covered by the Western Circuit in the autumn of 1685 one prisoner (Lady Lisle) was executed during the assizes in Hampshire, seventy-four were executed in Dorset, two in Devon, and four in Somerset. Altogether eighty-one people suffered death before Jeffreys finished the circuit. Of the remaining prisoners ordered for execution—some 240—it is certain that only about a third of this number were put to death. The total number of executions in the four counties, including those which took place after Jeffreys' departure, was, therefore, less than 200—probably between 160 and 170—not an unduly high figure out of a total of 1381 persons who had been found guilty of treason and upon whom sentence of death had been pronounced.

This assize forms the most adversely criticized episode in Jeffreys' career, but in fairness to the Chief Justice there are certain relevant factors which must not be overlooked. First, the responsibility for the outcome of the trials rests not alone with Jeffreys, but jointly with him and the four other judges in the Commission. Secondly, in the case of the 1381 prisoners found guilty of high treason it has never been suggested, apart from the case of Lady Lisle, which has already been considered, that any of them were improperly convicted. The penalty for treason was death, and the judges had no option but to pass the statutory sentence. The lists were sent to the King, and the fact that between 150 and 200 were executed and several

¹ Macaulay, ii, 635.

² The originals of these documents are now in the Public Record Office. The Gaol Book has been reprinted, with several facsimile pages, by F. A. Inderwick in his *Sidelights on the Stuarts*, pp. 398-427. The Judges' Lists, first published in 1933 in the *Calendar of Treasury Books*, 1685-89 (pp. 415-425), have been reprinted with interesting additional information by Mr J. G. Muddiman in *The Bloody Assizes* (pp. 195-225). There is a copy of these lists among the Hardwicke Papers in the British Museum (Add. MSS. 31957) entitled, "An Account of the Proceedings against the Rebels and other Prisoners in the several Countys of South'ton, Wilts, Dorsett, Devon, and Somerset, by virtue of His Ma'ties Speciall Commissions of Oyer and Terminer &c., General Gaole Delivery, directed to the Right Honourable George Lord Jeffreys."

hundreds more transported was the fault primarily of James, who should have exercised the royal prerogative of mercy in much fuller measure than he did, and singled out the ring-leaders alone for the extreme penalty. The King was in constant touch with Jeffreys during the circuit, and after Jeffreys had left Dorchester Sunderland wrote and told the Chief Justice that James entirely approved of the sentences already passed. In later years, when disaster had overtaken both James and Jeffreys, each put the blame upon the other for the severities in the West. The onus, it is submitted, must rest with the King, who was callous, vindictive, and cruel. Moreover, it is on record that Jeffreys afterwards protested to Lord Ailesbury that "he abhorred what had passed in that Commission."¹ James was determined upon a thoroughgoing revenge against every peasant and ploughboy who had joined the standard of his reprobate nephew, and Jeffreys and the other judges on the Commission were at worst the obedient instruments of this heartless policy. Indeed, the King openly rejoiced in what he was pleased to describe as his Chief Justice's "making his campaign in the West," and he is known to have referred to it with warm approval both in his conversation and correspondence at the time. The Chief Justice, he wrote to the Prince of Orange on September 24, "has almost done his campaign. He has already condemned several hundreds, some of which are already executed, some are to be, and the others sent to the plantations."² That Jeffreys was acting on the King's instructions we know, too, not only from the Judge's public admission at the end of Lady Lisle's trial, but also from his letters and the frequent accounts of the work of the Commission which he sent to the King from the different towns on the Western Circuit. As he wrote from Taunton, "I have this day finished what was necessary for your Majesty's service in this place, . . . and crave leave humbly and heartily to assure your Majesty I had rather die than I might omit any opportunity wherein I might approve myself."

In the seventeenth century convicted criminals who had been sentenced to transportation were frequently bestowed by the King on favoured courtiers and others for sale to the West

¹ Ailesbury, *Memoirs*, i, 121.

² Sir John Dalrymple, *Memoirs*, ii, 53.

Indian planters. James disposed of many of the rebels in this manner,¹ but with such utter lack of discrimination that his action called forth a protest from the Chief Justice. "I received your Majesty's commands by my Lord Sunderland about the rebels your Majesty designs for transportation," wrote Jeffreys from Taunton on September 19,

but I beseech your Majesty that I may inform you that each prisoner will be worth £10, if not £15, apiece, and that if your Majesty orders them as you have already designed, persons that have not suffered in your service will run away with the booty, and I am sure that your Majesty will be continually perplexed with petitions for recompense for sufferers as well as rewards for servants. Sir, I hope your Majesty will pardon this presumption. I know it is my duty to obey; I have only resented doing anything until I know your royal pleasure is they should have the men, for upon my allegiance to you, Sir, I shall never trim in my obedience to your commands in all things. Sir, had not your Majesty been pleased to declare your gracious intentions to them that served you in the soldiery and also to the many distressed families ruined by this late rebellion, I durst not have presumed to give your Majesty this trouble. Sir, I will when I have the honour to kiss your Majesty's hands humbly acquaint you with all matters your Majesty hath been graciously pleased to entrust me with, and doubt not, Sir, but to be able to propose a way how to gratify all such as your Majesty shall be pleased to think deserving of it, without touching your Exchequer.²

This attempt to divert the stream of rebels due to be transported into more deserving channels than those designed by the King was at least honest and disinterested; but it was of no effect. James insisted on distributing the convicts between the Queen and his favourites, who included Sir William Stapleton, the Governor of the Leeward Islands, Jerome Nipho, the Queen's Secretary, and a gentleman called Penn, who has been erroneously identified by Macaulay with the well-known Quaker of the same name. Over eight hundred rebels were disposed of in this fashion, but probably not more than a third to a half reached the West Indies. Considerable numbers escaped, others died in prison of fever, and many failed to survive the cruel Atlantic crossing of those times.

¹ Samuel Pepys, who, like many others, considered this a just punishment for treason, had no scruples in backing the petition of a sea-captain at this time for the grant of a thousand rebels for transportation to Virginia or the Indies, "there to be treated according to their deserts" (A. Bryant, *Samuel Pepys: The Saviour of the Navy*, p. 124).

² *S.P., Jac., Dom.*, 1685, 30/1.

Some of the better-to-do rebels, who obtained pardons, were obliged to purchase their freedom from the Crown in cash. But, on the whole, very few pardons were granted on these or any other terms. Among them, however, were the maids of Taunton who had presented Monmouth with an embroidered banner and a pocket Bible. Their freedom appears to have cost their parents about a hundred pounds each, which was paid to the Queen's ladies of honour, to whom the maids had been 'given' by the King. The story that Jeffreys put up pardons for auction and sold them wholesale, pocketing the proceeds, is the invention of the lively imaginations of successive Whig writers. He was already being well paid for his work by the Crown, for besides his judge's salary he received over £1400 towards his expenses on this circuit.¹ Macaulay, however, would have it otherwise. "He was ably assisted in the work of extortion," he wrote,

by the crew of parasites who were in the habit of drinking and laughing with him. The office of these men was to drive hard bargains with convicts under the terrors of death, and with parents trembling for the lives of children. A portion of the spoil was abandoned by Jeffreys to his agents. To one of his boon companions, it is said, he tossed a pardon for a rich traitor across the table during a revel. It was not safe to have recourse to any intercession except that of his creatures; for he guarded his profitable monopoly of mercy with jealous care; it was even suspected that he sent some persons to the gibbet solely because they had applied for the royal clemency through channels independent of him.²

The King was the final and, indeed, the sole arbiter in the matter of pardons, and all petitions were referred to him by the judges. "Do not flatter yourself with hopes," said Lord Churchill to the sister of one rebel, Benjamin Hewling, who had come to Whitehall to beg mercy of the King. "This marble" (touching the mantelpiece) "is not harder than the King." In this case the prediction proved correct, for James was inexorable. Sunderland wrote twice to ask Jeffreys for the life of a young man called William Jenkyn, who had been

¹ Jeffreys received £1404 18s. "towards defraying the expenses on the Commission for trial of rebels in the West" (*Calendar of Treasury Books*, 1685-89, p. 1046). Woolrych (p. 238 n.) states that this money was paid by the Crown solicitors, Graham and Burton.

² ii, 642.



JAMES, DUKE OF MONMOUTH. AFTER EXECUTION
Sir Godfrey Kneller
National Portrait Gallery



JEFFREYS AS LORD CHANCELLOR

From the portrait by Sir Godfrey Kneller at Chillingham Castle, Northumberland
By permission of the Earl of Tankerville

convicted at Taunton, but Jeffreys could do nothing without the King's consent, and again James remained unmoved. Christopher Battiscombe, a barrister of a good Dorset family, was another rebel whom the King refused to pardon, for he had been implicated in the Rye House Plot as well. A young lady, to whom he was engaged, is said to have thrown herself literally at the Chief Justice's feet, begging for mercy, and Macaulay, who has adopted this picturesque but wholly imaginary interview from *The Western Martyrology*, adds that "Jeffreys drove her from him with a jest so hideous that to repeat it would be an offence against decency and humanity."¹

The charges of extortion generally brought against Jeffreys can be reduced to one case—that of Edmund Prideaux—and even here the facts have not, as a rule, been clearly understood. Prideaux is usually represented as a man whose only offences in the Chief Justice's eyes were his Whig sympathies and his wealth, and it is said that he was compelled, under threat of indictment for high treason, to ransom himself for an enormous sum. The truth is that Prideaux had been plotting with Monmouth for years, and on the Duke's landing in the West he sent the rebel leader valuable aid in the shape of money and horses. Such conduct was, of course, treasonable; and there is no doubt that if Prideaux had been brought to trial he would have been justly convicted. James, however, who was approached by Prideaux's friends, decided to 'give' him to his Chief Justice as a reward—that is, instead of letting him be convicted and then commuting the death sentence to a heavy fine, which he might then have presented to the Chief Justice, to leave him to make what terms he could with Jeffreys. The sum agreed upon was £15,000, less £240 for prompt payment, and on these terms Prideaux eventually received a pardon under the Privy Seal, while Jeffreys laid out the money in the purchase of an estate in Leicestershire. This is the only known instance which can in any way substantiate Macaulay's charge that Jeffreys "traded largely in pardons." Ethically the transaction is indefensible, judged by present-day standards, but until the Revolution it was not considered illegal in an age when convicts were frequently 'given' to favoured courtiers for sale to the West Indies. In accepting

¹ ii, 638.

the gift Jeffreys was not in any sense so blameworthy as was the King in offering it.

The executions, which were carried out in the West Country and attributed by many to the Chief Justice's lust for blood, made an unforgettable impression on the inhabitants of those parts. To their children and grandchildren, who heard the story of the rebellion from their lips, the name of Judge Jeffreys became a byword in the annals of terror and cruelty. Tales of that time are still told with bated breath over the cider barrels in Devon and Somerset—how the bloodthirsty judge boasted that he had hanged more traitors than all his predecessors put together since the Conquest, how his truly terrifying gaze so affected one of the maids of Taunton that on leaving the courthouse she fell down dead, and how he ordered a corpse to be suspended in chains outside the park gates of a peer who complained of the Judge's savagery. "The hatred with which he was regarded by the people of Somersetshire has no parallel in our history," wrote Macaulay, this time with a fair measure of accuracy. "It was not to be quenched by time or by political changes, was long transmitted from generation to generation, and raged fiercely against his innocent progeny." Many years later Jeffreys' granddaughter, the Countess Pomfret, happened to be travelling in the West, and on her lineage becoming known she was insulted and hooted by the peasants, and "found that she could not safely venture herself among the descendants of those who had witnessed the Bloody Assizes."¹

Yet Jeffreys was not as black as he has been so often painted, for, as we have seen, the real villain of the Bloody Assizes in the West was King James II. What Jeffreys did, to quote his own words on his deathbed four years later, "he did by express orders, and he was not half bloody enough for the prince who sent him thither."²

¹ Macaulay, ii, 652; Roberts, *Monmouth* (1844), ii, 188 *et seq.* An interesting account of the numerous legends connected with Judge Jeffreys has been written by the late Mrs M. C. Balfour in the *English Review*, xlix (1929), 200.

² Burnet, iii, 61 *n.*

LORD CHANCELLOR

IT was with a heavy heart that Roger North on the day following the death of his brother, Lord Keeper Guilford, handed over the Great Seal to King James II. He had an accurate notion of the identity of its next recipient. "It is concluded," Roger told a friend shortly after this visit, "that my Lord Jeffreys will have the Seal. Some say it is already declared." His forecast proved correct. Furthermore, Jeffreys was granted the superior title of Lord Chancellor, whereas his predecessor had only been Lord Keeper. On September 28, 1685, the Lord Chief Justice on his way from the West stopped at Windsor to see the King; and there, in the words of the official notification,

His Majesty, taking into his royal consideration the many eminent and faithful services of the Right Honourable George Lord Jeffreys of Wem, Lord Chief Justice of England, has rendered the Crown, as well in the reign of the late King of ever-blessed memory as since his Majesty's accession to the throne, was pleased this day to commit to him the custody of the Great Seal of England with the title of Lord Chancellor.

Thus at the remarkably early age of forty Jeffreys reached the summit of his profession, and became as well the King's principal adviser alike on legal and on political matters. His appointment has, in fact, created a record, for he remains the youngest Lord Chancellor in history.

In those days the office of Lord Chancellor involved presiding on the bench in the Court of Chancery as well as on the Woolsack in the House of Lords, and the salary of £4000 a year which was attached to it may seem modest when compared with the earnings of some counsel in those days, which sometimes came to more than twice that amount. In practice, however, it was augmented by fees from suitors and, curiously enough, the customary New Year gift from the Bar, which we know in the case of Lord Chancellor Nottingham, who died in 1682, "came to near £3000 in gold." The Chancellorship also

carried with it a fine house in Great Queen Street, off Lincoln's Inn Fields. In this building were situated the offices of the Chancellor's legal staff, but since Nottingham's time the Chancellor was accustomed to reside on the premises, and he sometimes even heard causes there when it was inconvenient to go to Westminster Hall.¹

Another of the distasteful duties which Guilford's death forced upon Roger North was to wait upon the new Chancellor and, having offered his congratulations, to make arrangements for Jeffreys to take over the house when the late Lord Keeper's effects had been removed from it. "It was so proceeded that he took the house," wrote Roger afterwards.

But I had such holy water from him, such elaborate speeches of encouragement as I never hope to, or rather hope never to, hear again. There was no service he could do me but he would lose his sleep and run at all hours to do it. I had, said he, lost a brother, but found a friend.

Roger North probably exaggerated the new Lord Chancellor's civilities on this occasion, but there is no doubt that he placed no great faith in whatever Jeffreys may have said. Jeffreys had on previous occasions rated him soundly from the bench, and he was to do so again, even to the extent of telling the mortified Roger that he must think he "had the monopoly of understanding."²

On October 3 Jeffreys and the other judges who had just returned from the Western Circuit had an audience of the King at Windsor, and were thanked by James for their work. At the same time the King announced a number of legal appointments, upon which he had determined with the help of his new Chancellor. Sir Edward Herbert became Lord Chief Justice, while the Chief Justiceship of Chester went to Serjeant Lutwyche, a mediocre lawyer who had been at Shrewsbury School with Jeffreys. Among the other appoint-

¹ This house, which was built by Viscount Conway about 1638 and was known as Conway House, was partly on the site of the present Freemasons' Hall. It had a frontage on Great Queen Street of 88 feet, and extended backward towards the south about 199 feet, and the premises included a courtyard, a garden, and ample stables and outhouses. It was demolished in 1743, and four smaller houses were built on the site. See H. B. Wheatley, *London Past and Present* (1891), iii, 136, and Sir Laurence Gomme, *L.C.C. Survey of London*, v (*Parish of St Giles-in-the-Fields*) (1914), Part II, 60, 81.

² North, *Lives*, iii, 195.

ments Jeffreys did not forget his cousin Sir John Trevor, who now became Master of the Rolls. This appointment of a near relative of the Chancellor's to be the second judge in his court naturally aroused some criticism. But Roger North, who became by reason of these changes Attorney-General to the Queen, does not seem to have been among the critics this time.¹

On the first day of the Michaelmas term, which was October 23, the new Lord Chancellor took his seat in the Court of Chancery in Westminster Hall, and subscribed the customary oaths. Three of his Cabinet colleagues, Sunderland, Rochester, and Clarendon, accompanied him and stayed while he heard his first motion. Later the same day Jeffreys went into his old court, which was opposite the Chancellor's, for the purpose of swearing in Sir Edward Herbert as Lord Chief Justice. First of all he delivered a short valedictory address to the members of the Bar who practised in the King's Bench, thanking them for the kind assistance they had given him. "They did not prate impertinently to please the audience," he said, adding as he looked in the direction of Williams and Wallop, "for if we met any such they were sure to meet with a rebuke." He then turned to the new Lord Chief Justice and exhorted him, in rather striking language, to do his duty: "Be undaunted and courageous; be sure to execute the law to the utmost of its vengeance upon those that are known—and we have reason to remember them—by the name of Whigs! And you are likewise to remember the snivelling Trimmers! For you know what our Saviour Jesus Christ says in the Gospel, that 'they that are not for us are against us.'" Herbert was also to be kindly disposed towards the Bar and the inferior magistrates, "though perhaps," Jeffreys added with regard to the latter, "they have not arrived to that perfection in the knowledge of the law which is a good fortune of a particular education in the profession." But on no account must Herbert be lacking in the task of dealing with Whiggery. "In fine, sir," the Lord Chancellor concluded, "as the sum of all your duty, fear God and honour the King; but use your utmost authority for the suppression of those that are given to change." By way of return for this homily the new Lord Chief Justice

¹ Sir John Bramston, *Autobiography* (1845), pp. 207-208.

entertained the Chancellor to dinner the same day in Serjeants' Inn.¹

Jeffreys' next public function occurred a few weeks later, on November 9, when he took his seat on the Woolsack in the House of Lords and listened to the King opening the new session of Parliament with a speech from the throne. James and Jeffreys did not find either House in a particularly amiable mood. The Commons, in whose election Jeffreys had taken a striking part earlier in the year, were for the most part a carefully chosen body of High Tory nominees which, it was hoped, would serve the King's ends. But, however anxious members may have been to please his Majesty then, this was not the case now. Monmouth's rebellion had given James a convenient excuse for maintaining a standing army, which was now nearly thirty thousand strong. Upward of half this number was encamped near London on Hounslow Heath, where the lax discipline of the troops was causing general dissatisfaction among civilians of all parties. By an arbitrary use of his prerogative James had 'dispensed' with the Test Act in a number of cases, so as to admit Catholic officers to positions of command. Furthermore, priests moved freely within the lines, and all ranks were encouraged to attend Mass.

In his speech to Parliament the King sought to excuse himself for employing Catholic officers on the ground that many of them were personally known to him and on frequent occasions had given convincing proofs of their loyalty. "And," he added, "to deal plainly with you, after having had the benefit of their services in time of danger, I will neither expose them to disgrace nor myself to the want of their assistance should a second rebellion make it necessary."²

The King wished the officers' position to be legalized by the repeal of the Test Act, but his publicly expressed hope that the matter would produce no dissension between him and the two Houses was belied. The Commons prayed his Majesty to discharge the Catholic officers, while the Lords, although they returned a formal address of thanks to the King for his gracious speech, permitted one of their number, the Marquess of Winchester, to initiate a debate on the "illegal employment" of these officers. The motion was warmly

¹ Irving, p. 313.

² J. Lingard, *History of England* (1831), xiv, 85.

supported by Halifax, who further expostulated in private with the King on the subject, and had his name struck off the Privy Council and was deprived of his office of President of the Council. Only Jeffreys among the other Ministers opposed the motion with any vigour. No report of the debate has survived, so that we do not know exactly what Jeffreys said on this occasion. The chronicler Luttrell heard that the debate had gone off "not without some reflections on the Chancellor," while Bishop Burnet asserts that when "Jeffreys began to argue in his rough manner" his style of oratory did not appeal to their lordships, and that in consequence "he was soon taken down" and "received as great a mortification as such a brutal man as he was capable of."¹

However this may be, we do know that the upshot of the debate was a resolution that the Lords should take the King's Speech into consideration on the following Monday. James thereupon determined to prevent any further discussion on the lines of opposition to his will, and on his instructions Jeffreys prorogued Parliament next day. Henceforward the King would rule the country and change its laws without the assistance of his faithful Lords and Commons. What is more, he relied upon the Lord Chancellor to help him.

II

As Lord Chancellor Jeffreys could no longer act as a judge in an ordinary criminal trial: Sir Edward Herbert now occupied his old place in the King's Bench. But there was one exception to his criminal jurisdiction. In the case of a trial of a peer for treason and felony, which took place before his fellow-peers, the King could appoint the Chancellor to act as judge for the occasion, with the *ex officio* title of Lord High Steward. There were very few persons of quality who had been charged with conspiring with Monmouth, and only two peers, Lords Grey and Delamere. The ignoble Grey had, as we have seen, thrown himself on the King's mercy and been promised a pardon, which he subsequently obtained. Delamere we have also met before, when he sat in the House of Commons as Henry Booth, one of the members for Cheshire,

¹ Luttrell, i, 364; Burnet, iii, 85.

and denounced Jeffreys as "a jack pudding." He and his father, whom he succeeded as Lord Delamere in 1684, had both been friends of Monmouth, and had entertained him on the occasion of his visit to Cheshire in 1682. Delamere was arrested soon after Sedgemoor, and, although he had taken no part in the Western campaign, he was accused of having gone into his native county a short time before with a view to promoting a rising in the North of England.

Delamere confidently refused to admit his guilt, and he was accordingly brought to stand his trial in Westminster Hall on January 25, 1686. The court consisted of Lord Chancellor Jeffreys, who presided as Lord High Steward, and a committee of twenty-seven other peers, or 'Triers,' appointed to act as a jury. Each Trier returned a separate verdict at the end of the trial, and a total of twelve or more was sufficient to convict or acquit. The Triers included peers such as Rochester, Sunderland, Mulgrave, Feversham, Newport, Dartmouth, Churchill, and the Duke of Beaufort, who from their positions at Court or in the Government might be expected to favour the Crown, and, indeed, appeared to have been selected by the King for this purpose. The trial took place before the Lord High Steward's court, and not the whole body of the House of Lords, because Parliament was not sitting. Many of the Triers, however, seem to have regarded the court as a usurpation of the privileges of the Upper House to try one of their number, with the result that any favour which they might otherwise have shown the Crown was to a great extent negated. Jeffreys, on the other hand, seemed to have forgotten that the prisoner had once called him "a jack pudding," for he behaved with conspicuous fairness throughout the proceedings, and, as Lord Ailesbury, who was a spectator, wrote, "kept himself better than usual in bounds as to his tongue, however he launched out sometimes."¹

As soon as the Lord High Steward and the Triers had assembled in their places, the Clerk of the Crown read the commission by whose authority the trial was to take place. Then the white staff, the Lord High Steward's emblem of office, was carried between the Garter King-of-Arms and the Gentleman Usher of the Black Rod, who knelt down and

¹ Howell, *State Trials*, xx, 509; Ailesbury, *Memoirs*, i, 134-136.

presented it to Jeffreys. The Lord High Steward then handed back the staff to Black Rod, who held it during the trial. After the Lieutenant of the Tower had produced Lord Delamere and the Triers had answered to their names Jeffreys addressed the prisoner :

“My Lord Delamere, the King being acquainted that you stand accused of high treason, not by common report of hearsay, but by a Bill of Indictment found against you by gentlemen of great quality and known integrity within the County Palatine of Chester, the place of your residence, has thought it necessary in tenderness to you as well as justice to himself to order you a speedy trial.

“My lord, if you know yourself innocent, in the name of God do not despond, for you may be assured of a fair and patient hearing and in your proper time a free liberty to make your full defence; and I am sure you cannot but be well convinced that my noble lords that are here your peers to try you will be as desirous and ready to acquit you if you appear to be innocent as they will to convict you if you appear to be guilty.”

Before the trial proper began Delamere advanced a number of preliminary objections, and it must be admitted that Jeffreys allowed him every possible latitude consistent with his own duty and the dignity of the occasion. First of all the prisoner declined to hold up his hand when requested to do so by the Clerk, who was about to read the indictment, and claimed that it was a peer's privilege not to do so. The Lord High Steward obviated this difficulty by telling the Triers that if they were satisfied the prisoner at the bar was the person indicted the holding up of the hand was but a formality, and it did not signify much either way. The indictment was read, and at Delamere's request read a second time. Delamere then refused to plead to it on the ground that, as Parliament was not dissolved, but only prorogued, he ought to be tried there. He was furthermore allowed to put in a special plea to this effect, which he had drawn up himself, and the Lord High Steward offered to hear arguments on the point if the prisoner had his counsel ready. But Delamere did not have any counsel ready, and, as the rules of the court would not permit of an adjournment to enable him to instruct them, Jeffreys dismissed the plea as frivolous.

The prisoner understood this ruling to mean that the

privilege of a peer was frivolous, but Jeffreys quickly disabused him of this idea. "Pray, good my lord," he said, "do not think that I should say any such thing that the privilege of the peers is frivolous, for you do not hear me say that this is one of their privileges. As I would not willingly mistake you, so I desire your lordship would not misapprehend or misrepresent me. I spoke not at all of the peers' privilege, but of your plea. I tell your lordship, I think your plea is not a good plea to oust this court of the jurisdiction of your cause."

But Delamere was obstinate to the point of being impertinent: "I hope your grace will be pleased to advise with my lords the peers here present, it being a point of privilege."

"Good my lord," retorted Jeffreys sharply, "I hope you that are a prisoner at the bar are not to give me direction who I should advise with or how I should demean myself here."

Delamere then apologized for his impertinence, and proceeded to plead not guilty.

Before the Crown case was opened the Lord High Steward addressed the Triers, briefly recapitulating the circumstances of the late rebellion. He alluded to the Bill of Attainder introduced into Parliament against Monmouth, "and I could wish, my lords," he added, "for the sake of that noble lord at the bar, that I could say it had passed the consent of every particular member of each House." This reference to Delamere's having opposed the Bill in the House of Lords was of doubtful propriety, but Jeffreys in some measure atoned for it with the following observation: "My lords, what share my lord at the bar had in those other matters I must acquaint you is not within the compass of this indictment for which you are to try him as his peers; and that is for a treason alleged to have been committed by him in his Majesty's reign that now is."

Briefly the case against Delamere was that shortly before the Monmouth rebellion—namely, on April 14 and June 4—he had met Lord Brandon and others in Cheshire, and there concerted plans for a rising in that county. The first batch of Crown witnesses, who included Lords Howard of Escrick and Grey of Warke, gave general evidence of the rebellion, and repeated statements from Monmouth to the effect that he hoped Delamere would not fail him. Monmouth was further alleged to have written a letter to the prisoner directing him

and others to join the rebel forces in Taunton. Another batch of witnesses deposed to having seen Delamere leave London on May 27, and that he rode furiously northward by a roundabout route and under an assumed name.

The only witness whom the prosecution produced to prove the overt act of treason was a captured rebel named Saxon. This man stated that he had been introduced to the prisoner by Brandon, and had been sent for to Delamere's house in Cheshire at the beginning of June. There in "a lower room" he saw the prisoner and two other conspirators, Sir Robert Cotton and Mr Crew Offley. The witness was informed that the three men present were to have raised a force of ten thousand by June 1, but had been unable to do so owing to lack of funds. The prisoner was then alleged to have given the witness some money and instructed him to carry the bad news to Monmouth.

The prisoner was now allowed to cross-examine this witness. He did so with considerable effect. It soon came out that Saxon had been a prisoner in Newgate, and that he was now testifying falsely. He could give no satisfactory description of the messenger Delamere was supposed to have sent to fetch him, and when questioned about the topography of the prisoner's house in Cheshire he became so confused and contradictory in his replies that it was clear he was lying.

The prisoner was quick to follow up the advantage gained when he opened his defence. First he recited the preamble of his father's patent of nobility, which stated that the Restoration of the late King Charles II had been hastened by the rising of the first Lord Delamere. He then called witness after witness to prove that Saxon was a cheat and a forger and had defaulted on his debts. One such witness, named Wilkinson, stated that he had hired a horse to Saxon for three days at twelvecence a day, but that Saxon had absconded, and so he lost his horse and his money too. The date of this transaction, he added, was June 21. "I perceive by the time," remarked Jeffreys, "he rid into the Rebellion with his horse, and he was a very knave for so doing, upon my conscience."

Delamere then went on to prove with a succession of other witnesses that neither he nor the two other alleged conspirators had been at his house on the date in question. He explained

his various hurried journeys to Cheshire as being caused, as to the first, by an anxiety to take up a lease from the Bishop of Chester and, as to the second, by the illness of a favourite child. He went under an assumed name on this occasion because he heard there was a warrant out for his arrest, and, "knowing the inconveniences of lying in prison, I was very willing to keep as long out of custody as I could." He concluded his defence with a vigorous speech attacking the Crown evidence and stressing his alibis, to which the Solicitor-General, for the prosecution, could make no really satisfactory reply.

The Lord High Steward's summing up was brief. He pointed out that if Saxon was a good witness then the other indirect evidence might be held by the Triers to constitute the second witness which the law required to secure a conviction of high treason. "Your lordships are judges," he concluded, "and if you do not believe the testimony of Saxon, whose testimony hath been so positively contradicted by divers persons of quality, the prisoner ought to be acquitted of this indictment."

The Triers retired, and after half an hour's absence filed back into their places, intimating that they were agreed on their verdict. The Lord High Steward then turned to the junior peer present, Lord Churchill, and said to him, "How say you, my Lord Churchill, is Henry, Baron of Delamere, guilty of the high treason whereof he stands indicted and hath been arraigned, or not guilty?"

Lord Churchill stood up, uncovered his head, and, putting his hand on his breast, answered, "Not guilty, upon my honour."

One by one the other Triers followed suit. Lord Peterborough, on giving his verdict, is said to have whispered in his neighbour's ear, "Guilty, by God." When they had done Jeffreys formally discharged the prisoner.

"May it please your grace," said the fortunate Delamere (for he was almost certainly guilty, but had been clever enough to conceal his overt acts¹), "I shall pray to Almighty God to give me a heart to be thankful to Him for His mercy and my lords for their justice; and I pray God deliver their lordships

¹ Stephen, discussing this trial in his *History of Criminal Law* (i, 414), says Delamere was innocent, but he appears to have written without knowledge of the facts.

and all honest men from wicked and malicious lying and false testimony. I pray God bless his Majesty, and long may he reign!"

"And I pray God continue to him his loyal peers," echoed the Lord High Steward, "and all other his loyal subjects."

A few moments later Jeffreys received the white staff from Black Rod, and, holding it over his own head, he broke it in two and thereby dissolved the court. Thus ended the last criminal trial at which Jeffreys was to preside, and also the last meeting of the Court of the Lord High Steward.¹

III

A few days after Delamere's trial the Lord Chancellor gave a dinner at his house in Great Queen Street, to which he invited a number of friends, including Sir Robert Geffery and the Governor of York, Sir John Resesby. "After dinner," noted Resesby in his diary,

the Chancellor, having drunk smartly at table (which was his custom), called for one Mountfort, a gentleman of his that had been a comedian, an excellent mimic²; and to divert the company, as he called it, made him give us a cause—that is, plead before him in a feigned action, where he aped all the principal lawyers of the age in their tone of voice and action or gesture of body, and thus ridiculed not only the lawyers but the law itself.

In fact, the urbane and rather pompous Governor could not bring himself altogether to approve of this performance. It was no doubt very diverting, he added,

but not so prudent as I thought for so eminent a man in so great a station of the law, since nothing could get a man more enemies than to deride those whom they ought most to support.³

About this time Jeffreys seems to have surrounded himself

¹ The court had been in existence since at least 1400 (Halsbury, *The Laws of England*, ed. Hailsham (1931), viii, 548). In subsequent trials of peers in the House of Lords a peer has been appointed to act as Lord High Steward for the occasion, but he has had no judicial functions beyond his fellow-peers. Furthermore, the trials have taken place before the whole House, and not before a select body of Triers.

² William Mountfort (or Mumford), a well-known actor and dramatist. In 1692 he was stabbed to death in the street by a cut-throat named Captain Hill, assisted by Lord Mohun. Hill escaped, but Mohun was arrested, tried before the House of Lords, and acquitted.

³ *Memoirs* (1936), p. 408.

with a set of boon companions who were his inferiors socially and intellectually, and, indeed, in most other ways. Some of them, such as young Mountfort, lived with him and were part of his household: indeed, the gossip of the day was that the handsome actor was Lady Jeffreys' lover. Be that as it may, the Chancellor was content to tolerate him for his theatrical gifts. But, however affable he was in private to the multitude of hangers-on who sat at his table and drank his wine, the Chancellor appears to have had no hesitation in abusing them in public when he was in the mood. In such society, with the accompaniment of bouts of heavy drinking and constant smoking, he sought a temporary relief from the agonies of the stone. "His friendship and conversation lay much among the good fellows and humorists," wrote Roger North of him at this time;

and his delights were accordingly drinking, laughing, singing, kissing, and all the extravagances of the bottle. He had a set of banterers for the most part near him, as in old time great men kept fools to make them merry. And these fellows abusing one another and their betters were a regale to him. And no friendship or dearness could be so great in private which he would not use ill, and to an extravagant degree, in public. No one that had any expectations from him was safe from his public contempt and derision which some of his minions at the Bar bitterly felt. Those above or that could hurt or benefit him, and none else, might depend on fair quarter at his hands.¹

The big house in Great Queen Street was so full of children and dependants that the Chancellor's brother James, the Prebendary of Canterbury, had difficulty in securing accommodation. One member of the household, Dr Spark, who was one of the Chancellor's two chaplains, and who also seems to have acted as a kind of secretary or comptroller, wrote the following letter to the Prebendary about this date ²:

¹ *Lives*, i, 298.

² Jeffreys MSS. (*Home Counties Magazine*, xii (1910), 13). The Rev. Thomas Spark, D.D. (1655-92)—like Jeffreys, an old Westminster boy and a Welshman—enjoyed a number of benefices, including the living of Hog's Norton, in Leicestershire, which he owed to his patron. His biographer Wood, while characterizing him as a learned man, says he was "confident and forward without measure," and given to "excesses and too much agitation in obtaining spiritualities, . . . which, contrary to his expectation, brought him in the prime of his years to his grave" (*Athenæ Oxonienses*, iv, 368). See also *Dict. Nat. Biog.*, liii, 311. Jeffreys had a second chaplain (mentioned below), the Rev. Luke de Beaulieu, a French Protestant who had settled in England in 1667. He was the author of a well-

February 20, 1686

GOOD DOCTOR,

I gave your service to my lady last night and hinted to her that you would shortly be in town, but I could lay hold of nothing from her that tended towards your reception here. At present Mrs Mary Bludworth is with us and has part of my Lady More's bed.¹ The children² are disposed in the [other] bedroom, and on the side of both there is a chamber vacant, but no bed put up in it.

My brother³ may with no great prejudice to himself give you the use of his room for the time that you intend to stay, for there are conjugal duties which his Soul of Love may expect from him, unless he resolves upon a religious observance of Lent, which if he does I am sure in one respect he will have no great temptation to break it.

My lord returned home very cheerful and well. Mr Hampden's pardon, as they tell me, passed the Seals to-day, and his Majesty has remitted him his fine.⁴

I am, sir,

Your humble servant,

T. SPARK

The cost of maintaining this large establishment, as well as the constant round of entertainments in which the Chancellor

known manual of devotion, *Clastrum Animæ* (*Dict. Nat. Biog.*, iv, 52). Both chaplains appear to have remained in Jeffreys' service until the Revolution. During the dispute in 1688 between the King and the Fellows of Magdalen College, Oxford, Convocation refused to grant them the degree of Doctor, thereby flouting the royal command (J. R. Bloxam, *Magdalen College and King James II* (1886), p. 95).

¹ Mary Bludworth and Lady Moore were daughter and stepdaughter respectively of Jeffreys' father-in-law, Sir Thomas Bludworth. Jeffreys remembered them both in his will.

² These were Mary (aged five) and Christiana (aged two). Three other children by Jeffreys' second wife—Ann, the first-born, Thomas, and Elizabeth—had died in infancy. Three more children, born subsequently to this date—Ann in 1686, George in 1687, and another child in 1688—also died in infancy. There was, of course, the Judge's family by his first wife, but the survivors of these children were now growing up. Margaret, the eldest of the family, was about eighteen at this date, and Sarah a year or two younger. Of the boys John, the eldest, now twelve years old, was the only survivor, since his four brothers, Thomas, George, Robert, and a second Robert, had also died young. See *Registers of St Mary the Virgin, Aldermanbury*, Part II, *passim*.

³ The other chaplain, Dr Beaulieu.

⁴ John Hampden had been in prison since his prosecution for complicity in the Rye House Plot in 1683, when he had been fined £40,000 (see above, p. 163). After the Monmouth Rebellion he was put on his trial for high treason, since the Government had now procured a second witness against him in the person of Lord Grey of Warke. As his conviction was certain he pleaded guilty and threw himself on the King's mercy. He was sentenced to death, but subsequently pardoned, as stated in Dr Spark's letter, and restored to liberty. I cannot find any reliable authority for the statement in the *Dictionary of National Biography* (xxiv, 263) that Hampden's pardon was conditional upon his paying Jeffreys and the King's Jesuit confessor, Father Petre, the sum of £6000.

indulged, was a source of anxiety to his brothers, besides the dangers not unnaturally expected from base and servile company. "I wish," wrote his brother Thomas,

he would trust less to those who so much frequent his table, who are but mere spies and promoters of debauchery and thereby dive into such things as may prove his overthrow. But who must dare to give counsel, when that of a brother is despised? I pray continually to the Almighty to direct him and to defend him against their malice.¹

It is only fair to notice, on the other hand, that Jeffreys had a number of reputable friends whom he habitually saw at this time, and who, unlike the others, did not desert the Chancellor when adversity ultimately overtook him. Some of them belonged, astonishingly enough, to the Whig camp in politics. First and foremost was the wealthy merchant and banker Sir Robert Clayton, who, it will be remembered, had been Lord Mayor in that troubled year (1679-80) which witnessed the beginning of the struggle between Petitioners and Abhorrrers.² This "Prince of Citizens," as the diarist Evelyn calls him from the magnificence of his civic entertainments, was a staunch Whig, and no doubt he had many heated political arguments with Jeffreys. But their friendship, at times strained, was never broken, in spite of the fact that Jeffreys took a strong line against him in such matters as 'petitioning' and the defence of the City's charter on the *Quo Warranto* proceedings; indeed, after the forfeiture of the charter Clayton was one of the eight Whig Aldermen who were turned out. Clayton furthermore acted for Jeffreys in several financial transactions, and the Judge was not ungrateful to him. A few weeks after Jeffreys became Chancellor some members of the Government endeavoured to implicate Clayton in treasonable activities. It is said that the King was anxious that the ex-Lord Mayor should suffer, since he had moved the Exclusion Bill in the House of Commons, but that Jeffreys interceded for him and saved his life. James, however, was determined to have the head of a City magnate, and he is supposed to have consented to the substitution of the Whig ex-Sheriff Henry Cornish. At all events, Cornish was arrested on a charge of complicity in

¹ Thomas to James Jeffreys, September 27, 1688; Jeffreys MSS. (*Home Counties Magazine*, xii (1910), 90).

² See above, p. 93.

the Rye House Plot, and duly condemned and executed in October 1685.¹

Another Whig who was always on good terms in private with the Chancellor, whatever passed between them in public, was the barrister Henry Pollexfen. If he was, in Burnet's words, "an honest and learned, but perplexed lawyer" Pollexfen was also one of the most eminent advocates of the day and, as a judicial colleague wrote of him on his death in 1691, "a very learned, upright, and useful man."² Although he had lately appeared for the Crown during the Bloody Assizes, he had been briefed for the defence in all the recent State trials, notably those of Stephen Colledge, Sir Patience Ward, Lord Russell, Thomas Rosewell, and Richard Baxter; and it will be recalled that in the last-named he had been stigmatized by Jeffreys as "the patron of faction." Roger North goes further and calls him "the adviser and advocate of all those who were afterwards found traitors," and blames Jeffreys for taking him "into the service to be the King's Counsel in those furious prosecutions" in the West.³ Jeffreys may have recommended him for this employment, but it should be remembered that professional etiquette demanded that, in the absence of the Law Officers, the Crown should be represented by a leading member of the circuit in which the assizes were held, and not by any lawyer, however eminent and desirable, chosen from outside the circuit. Besides his Whig sympathies Pollexfen had strong leanings towards Puritanism, and was said to be a frequenter of conventicles. But all this made no difference to his friendship with the Chancellor, and after the Bloody Assizes he remained as friendly as ever in private. When Jeffreys came to execute a settlement of his landed estates, as he was shortly to do, it is significant that he should have asked Pollexfen to be one of his two trustees, and that Pollexfen should have accepted. The other trustee was the Whig Sir Robert Clayton.

Like that successful scrivener and banker, Sir Robert Clayton, most of Jeffreys' friends were the friends of his youth in the City. There was his namesake and first patron, Alderman John Jeffreys, who was known as "the great Smoaker"; and

¹ E. Foss, *The Judges of England*, vii (1848-64), 242, quoting Seward's *Anecdotes*.

² Burnet, ii, 209; Foss, vii, 337.

³ *Lives*, i, 283.

there were this alderman's two nephews, Jeffrey Jeffreys and John Jeffreys, of St Mary Axe, whom the Chancellor was to make executors under his will, where they are described as "well-beloved friends." There was too the Tory Lord Mayor, Sir Robert Geffery, that "most excellent magistrate," whom the Judge had, as we shall see, to reprimand by the King's order about this time for shutting up a Catholic chapel which had been fitted out in the City by a member of the Diplomatic Corps. Geffery, however, was not inclined to bear any malice, and he was to stick by the Chancellor to the end. Another City banker often to be seen in the Chancellor's company was Alderman Charles Duncombe, reputed to be the richest commoner in England. The diarist John Evelyn often dined with the Chancellor, and admittedly enjoyed himself; while that other great diarist and able Secretary of the Navy, Mr Samuel Pepys—"my most honoured friend," as Jeffreys called him in a letter¹—also partook of the Chancellor's hospitality. Others with whom he consorted included the Ministers of State, Lords Sunderland, Rochester, and Clarendon; the Governor of York, Sir John Reresby; his own cousin, Sir John Trevor, now Master of the Rolls; and his brother-in-law, Sir Thomas Bludworth the younger. All these men were persons of ability and substantial attainments, and they all had a certain measure of culture, though in some it was obviously more marked than in others. Nevertheless, they were friends who did the Chancellor credit and who in some degree respected him.

But even these friends were not above indulging now and then in a heavy drinking bout. In February 1686, a week or two after the dinner at which the actor Mountfort performed, Jeffreys and Lord Treasurer Rochester went to dine with the wealthy alderman Charles Duncombe in his house in the City, where there was "a great debauch of wine." At this merry gathering (so Reresby tells us) Jeffreys, Rochester, and several others

drank to that height as 'twas whispered that they stripped into their shirts and, had not an accident prevented, would have got upon a signpost to drink the King's health, which gave occasion of derision, not to say more of the matter.²

¹ Jeffreys to Pepys, July 17, 1687 (Rawlinson MSS., A.189, f. 85).

² *Memoirs* (1936), p. 411.

This outburst on the part of the Chancellor brought on such a serious attack of the stone that he had to take to his bed, where he was reported to be much troubled with vomiting. For some days, indeed, his life was despaired of. Barillon, the French Ambassador, reported that the King was deeply troubled by the Chancellor's illness, saying that the loss of such a Minister would be hard to repair. His recovery, stimulated "by the use of means," was slow, so that when he was well enough to travel he retired to Bulstrode in order to regain his strength.¹

A year or two before this—the precise date is unknown—the mansion house at Bulstrode had been destroyed by fire, and Jeffreys had set about rebuilding the remains of the old Elizabethan mansion to his particular taste. It seems to have been completed just in time for him to go down there to convalesce after his illness in February 1686. It was a long, low building—the south front measured 200 feet. On the east there was a fine hall two storeys high, but with this exception the house had only one storey. The principal rooms are said to have been very handsome, but the bedrooms cannot have been particularly comfortable, as they were all situated in the basement.² There was, of course, a chapel attached to the house, for Jeffreys was unfailing in his fidelity to the Established Church. It is said to have contained some fine glass, and Horace Walpole, who saw it many years later, when Bulstrode had passed into the possession of the Portland family, noted that the ceiling had been "decorated with the assumption or rather presumption of Chancellor Jeffreys, to whom it belonged, but a very judicious fire hurried him somewhere else."³

The Chancellor returned to Great Queen Street from Bulstrode towards the end of March to face a host of difficulties and worries, both domestic and political. Nor had he completely recovered himself. His strength, so he told the Irish Viceroy Clarendon, to whom he wrote on his arrival about some legal appointments in Ireland, had been "much impaired by my late long and severe fit of the stone, which as yet I cannot be so happy as to be quite rid of."⁴

¹ Luttrell, i, 371; *Ellis Correspondence* (1825), i, 37.

² A map of the house and estate drawn by John Fisher (probably the architect) in 1686 is preserved in the present mansion (*Home Counties Magazine*, x, 19).

³ Walpole, *Letters*, ed. Toynbee (1903), iii, 117.

⁴ *Clarendon Correspondence*, ed. Singer (1828), i, 323.

IV

The Chancellor was now suffering agonies of body and mind. Again he wrote to Clarendon that he was "being hurried with the business of the term and perpetually tormented with my old distemper." His mental anguish was caused by the King's policy in ecclesiastical affairs, which was showing an alarming orientation towards Papacy and the Romanizing of the country and its national Church. This policy was of great concern to Jeffreys, since the Chancellor was, as "Keeper of the King's Conscience," under a moral as well as a legal obligation to the Church, and he was also the adviser of the King in the distribution of ecclesiastical patronage. As we have seen, James had already by an arbitrary use of his prerogative dispensed with the Test Act, so as to permit Catholic officers to serve in the Army. He now planned to fill all the principal offices in Church and State with men of this religious denomination.

For the promotion of these designs the King formed an inner *coterie* of the Cabinet, of which the most blamed has been his Jesuit confessor, Father Petre—a vain, ambitious cleric, whose admission to the King's inner counsels about this time offended even the more sober-minded Catholics in the country. James and Petre were encouraged by the unprincipled Minister Sunderland, who was now a Catholic in everything but name. A few months previously Halifax had been dismissed from the office of Lord President for opposing the breaches of the Test Act, and the Tory opposition in the Cabinet to the King's plans was now being led by the Lord Treasurer, Rochester. Rochester was in turn pursued by Sunderland with a rancour more bitter than any displayed by Jeffreys towards the late Lord Keeper Guilford. For the time being, however, Rochester contrived to hold his own, though the divisions of opinion in the Cabinet grew weekly more marked, and it eventually became plain that Rochester was fighting a losing battle. The Chancellor was torn between two loyalties—loyalty to his Church and loyalty to his King. At first he sided with the High Tories, represented by Rochester and Godolphin, as a result of which he was reported about the beginning of June to be "in very little credit, . . . inasmuch

that, it is said, he will not be long in his place." Consequently the Lord Treasurer did all he could to aid his colleague in weathering the storm. Gossip ran that they were "perpetually together, and go sometimes to Hyde Park and sometimes to the play together."

The immediate cause of this decline in favour can be traced to a quarrel, which is said to have annoyed the King, between Jeffreys and Sir Edward Herbert, his successor as Lord Chief Justice. Jeffreys seems to have begun by advancing some legal objections in the Cabinet to the King's proposal, which had been warmly seconded by Herbert, of a declaration on the part of the judges in favour of the dispensing power. Herbert, who took offence, retorted from the bench by attacking the Chancellor's recent conduct on the Bloody Assizes, "laying open his briberies and corruptions (as they are called) in the West," and "saying that the poor and miserable were hanged, but the more substantial escaped."¹ Herbert advised the King to reform the bench and appoint judges whose opinions in the matter of the dispensing power would be unquestioned. James gave the necessary directions, and among those dismissed were two of the judges, Levinz and Montagu, who had accompanied Jeffreys in the West. Others followed. "I am determind," said the King to Chief Justice Jones, of the Common Pleas, "to have twelve judges who will be all of my mind as to this matter." "Your Majesty," answered Jones, "may find twelve judges of your mind, but hardly twelve lawyers."² But James had his way, and the bench was filled with servile judges ready to do the royal bidding. The newcomers included Henry Bedingfield, whose promotion Jeffreys had blocked some years previously when he had been proposed by Guilford and Christopher Milton, a brother of the poet, but, unlike him, a violent protagonist of the King's prerogative.

For a while Jeffreys 'trimmed' and hesitated as to which party in the Cabinet he should support—the Catholic Tories headed by Sunderland and Petre or the Anglican Tories represented by Rochester and Godolphin. His ultimate decision was governed by a hint from Sunderland that he would lose the Great Seal if he refused to fall in with the King's wishes.

¹ *Clarendon Correspondence*, i, 426; Reresby, *Memoirs* (1936), pp. 426–427 (quoting Spencer MSS.).

² Macaulay, ii, 734.

The high office for which he had striven so hard he felt he could not lightly yield, and rather than anticipate the modern principle of Ministerial responsibility by resigning the Chancellorship he decided to co-operate with the Catholic clique and support the King's declared policy, although the latter included measures which went against the grain with him and which in his conscience he could hardly approve.

The position of the exiled French Huguenots gave Jeffreys his first serious qualm. The recent revocation by Louis XIV of the famous Edict of Nantes, by virtue of which his Protestant subjects had enjoyed the blessings of religious toleration for over a century, had resulted in thousands of refugees flocking to England. One of these refugees, a well-known minister named Claude, wrote in the French language an account of the sufferings of his brethren, and this account, first published on the Continent, later appeared in an English translation.¹ Barillon, the French Ambassador, was instructed to approach James and request in his master's name that the work in question should have some opprobrious mark set upon it. The King forthwith informed the Privy Council that it was his pleasure that the offending writing should be burned by the common hangman outside the Royal Exchange. Only Jeffreys had the courage to draw the King's attention to the impropriety of such a course; we are told that he

ventured to represent that such a proceeding was without example, that the book was written in a foreign tongue, that it had been printed at a foreign press, that it related entirely to transactions which had taken place in a foreign country, and that no English Government had ever animadverted on such works.

But the obstinate James was not to be moved by any arguments. "My resolution is taken," he told the silent and astonished Council. "It has become the fashion to treat kings disrespectfully, and they must stand by each other. One king should always take another's part; and I have particular reasons for showing this respect to the King of France." Both French and English versions were accordingly consigned to the flames.²

A further development in this connexion added to the King's

¹ The book was entitled *Complaints of the Cruel Treatment of the Protestants in France*.

² Luttrell, i, 377; Evelyn, iii, 204; Macaulay, ii, 732-733.

unpopularity and, incidentally, to that of his Chancellor. A considerable sum of money, no less than £40,000, had been subscribed by English sympathizers for the relief of the refugees. Several commissioners, of whom the Chancellor was one, were appointed to supervise the distribution of the fund. James, annoyed that all this money had been collected, tried to prevent as much as he could from reaching the distressed Huguenots by instructing Jeffreys to announce that all potential recipients must first join the Anglican communion. This news naturally caused considerable dissatisfaction when the Chancellor made it known to a large body of Huguenots whom he met. "The refugees," he is reported to have said (though no doubt with reluctance), "were too generally enemies of monarchy and episcopacy. If they wished for relief they must become members of the Church of England and take the sacrament from the hands of his chaplain." Many of the exiles, we are told, on hearing this announcement went away with sad hearts.¹

The King's religious policy was particularly disliked in the City, and it was not unnatural that it should bring the Chancellor into conflict with old friends there. A diplomatic agent who represented the Elector Palatine fitted up a Catholic chapel close to his City residence. The sight of this edifice was too much for even the Tory aldermen, and they protested against a proceeding which, as they said, "the ablest gentlemen of the long robe regarded as illegal." The Lord Mayor, Sir Robert Geffery, was consequently summoned to appear before the Privy Council. "Take heed what you do," said the King to him sternly. "Obey me; and do not trouble yourself either about gentlemen of the long robe or gentlemen of the short robe." This argument was then at James's bidding reinforced by the Chancellor, who had the embarrassing duty of rebuking his old friend before the Council. The Lord Mayor returned to the City with the intention of carrying out his instructions, but he was powerless to stop the rioting which occurred on the opening of the chapel for public worship. "No wooden gods!" shouted the populace, while the trained bands, which counted the Chancellor himself among their members, were heard to say when ordered to disperse the crowds, "We cannot in conscience fight for Popery."²

¹ Macaulay, ii, 734.

² *Ibid.*, 754-755.

James sought to give his actions a semblance of legality by obtaining the opinion of his servile judges in favour of the dispensing power. Sir Edward Hales, a Catholic whom the King had appointed to the command of a regiment of foot, was liable at the hands of a common informer to a penalty of £500 for holding a commission contrary to the Test Act. A collusive action was accordingly brought against him by one of his servants, a coachman named Godden. Chief Justice Herbert took the opinion of his judicial brethren, and they gave a practically unanimous verdict in favour of Hales—that is, that the King might lawfully dispense with penal statutes in particular cases. The result of the famous case of *Godden v. Hales* was that the King's Catholic projects were pursued more vigorously and more blatantly than before. Four Catholic peers were immediately admitted to the Privy Council. Furthermore, the King decided to use the dispensing power to enable Catholics to hold benefices in the Established Church, which he hoped by degrees to unite with Rome. To facilitate the reorganization of the Church of England which he planned James revived the old Court of High Commission, which had been declared illegal and abolished by the Long Parliament under Charles I. The whole government of the Church was now to be in the hands of seven commissioners, of whom the Lord Chancellor was to be President. Jeffreys shouldered this additional burden of responsibility with decidedly uncomfortable feelings.

To check or even to deflect the King's ecclesiastical views Jeffreys now realized was impossible, and also that his own personal considerations were of no account when weighed against Catholic interests. For his brother Thomas, the consul at Alicante, Jeffreys managed about this time to obtain the honour of knighthood¹; but when it came to pushing the

¹ Thomas Jeffreys was knighted by the King at Windsor Castle on July 11, 1686 (Le Neve, *Pedigrees of the Knights* (Harleian Society (1869), vol. viii), p. 405). He married a Spanish lady, Señora Laura Paulin, and embraced the Catholic faith. The proofs of his descent impressed the proud Spaniards, and caused him to be admitted to one of their orders of nobility, the Knights of Alcantara. "Since my arrival here," he wrote to the Chancellor on his return, "I have been visited by many of the Grandees—a thing not usual to strangers, . . . especially they acknowledging my proofs to be the best that ever were seen in the Council of Orders; so, if ever you should come to Spain, which God forbid, you may pretend anything, your quality being sufficiently known" (Jeffreys MSS.; *Home Counties Magazine*, xii (1910), 86).

professional claims of his other brother, James, the Prebendary of Canterbury, he had a more difficult task. The Rev. Dr James Jeffreys was particularly anxious to enjoy the revenues of the See of Chester, which had been vacant for some months, and the Chancellor promised to do all that he could to enable him to obtain this bishopric. Jeffreys' friend, Thomas Sprat, the versifying Bishop of Rochester, had spoken to the King on behalf of the Prebendary, who had been told that "the business is gone so far that there is one already appointed to succeed you in Canterbury." As a less attractive alternative James would have liked the archdeaconry of Canterbury, which he assumed to have been vacated owing to the promotion of its late occupant, Dr Samuel Parker, to the bishopric of Oxford.

A letter which Jeffreys wrote to his brother James on the subject is among the few private communications of his which have survived the disappearance of his papers after the Revolution. It begins with a reference to Jeffreys' landed property in Wales, and it also contains an interesting allusion to his brother's religious convictions, which evidently caused the Chancellor some uneasiness.¹

LONDON
3rd Aug^t 1686

DEARE BROTHER,

I rect^d yours at Bulstrode from whence I returned last night; and as for Sydalch² I have ordered the Writings³ to be prepared, so that you may see them executed at your coming to London, and carry 'em with you into Wales in y^r designed Journey. I desire you all take care for y^e payment of y^e money as I shall order, being very unwilling to alter my establish^t Resolution of giving credit^t to any beyond y^e River Dee.

As to your desire upon the promotion of Dr Parker, there will be no opportunity offer^d.⁴ As to other Hopes which I guess you are more often saluted with, I hope you will be wise enough to leave that to my managem^t and discretion, and not be too much corrupted by your own humour, or that that you know I think is worse—that of your Guardian the D[ean],⁵ thereby to prevent that advantage that your Friends think you deserve, and I shall always be willing to promote.

¹ Jeffreys MSS.; *Home Counties Magazine*, xii, 14, 17.

² Sydalch, or Sydalt, was a farm near Gwersyllt, in Denbighshire, which had been purchased by Jeffreys in 1670 (*Law Journal*, lxviii (1929), 330). See p. 84.

³ Probably a lease.

⁴ The reason was that Parker was allowed to hold the archdeaconry of Canterbury in commendam with his bishopric (*Dict. Nat. Biog.*, xliii, 273).

⁵ John Tillotson, Dean of Canterbury.

My Wife is somewhat better than she has been; my Brother Sr Thomas is now well, tho' he has of late been troubled with my unhappy Distemper. Wee designe next week for Tunbridge where wee hope to see you. My service to my Sister.

I am with all Sincerity,

Your most affectionate Brother and Serv^t

JEFFREYS, C.

In spite of the joint efforts of his brother and the Bishop of Rochester, the Prebendary was doomed to suffer disappointment. His friendship with his "guardian," Dean Tillotson, whom the King detested for his known predilection towards the principles of Nonconformity and toleration, appears to have been fatal to his hopes of advancement. A few weeks after receiving this letter James Jeffreys heard, to his intense chagrin, that the coveted bishopric had gone to Thomas Cartwright, one of the Chancellor's colleagues on the illegal Court of Ecclesiastical Commission and an "ambitious and servile, cruel and boisterous" prelate, who, in Burnet's words, "by the great liberties he allowed himself fell under much scandal of the worst sort," and "was looked on as a man that would more effectually advance the design of Popery than if he should turn over to it."¹

Shortly after this appointment had been made Jeffreys proposed to give his second chaplain, Dr Beaulieu, the living of Barking. The new Bishop of Chester, however, wanted it for his son. Although this son already held another living, the Bishop managed to obtain the King's consent. Jeffreys was furious, and at first refused to pass the patent. "What!" exclaimed the indignant Chancellor, tossing the patent aside. "Does he play tricks with me?" The patent was sent after him to Bulstrode, and again he refused his signature. Eventually he was summoned to Windsor, and, with much grumbling about simony and the like, he was obliged to yield.²

As for James Jeffreys, he remained a Prebendary until his death in September 1689. He did not forget his "guardian," the Dean, and in his will left him "10 guineas for a ring." In a letter to his widow Tillotson expressed considerable feeling "for my friend's kind remembrance of me for whom whilst living I had always a true affection and esteem and did heartily lament his loss." Tillotson, on the other hand, enjoyed

¹ iii, 144.

² Hist. MSS. Comm., Report VII, *Verney Papers*, p. 505.

rather better fortune in the matter of ecclesiastical preferment. Shortly after the Revolution he became Archbishop of Canterbury.¹

v.

Jeffreys' work as Lord Chancellor may conveniently be noticed here; it deserves some attention, for it is apt to be overshadowed by his better-known record as Lord Chief Justice. About three days a week during term time Jeffreys attended the Court of Chancery in Westminster Hall, and there dispensed equity to suitors. When he was absent his place on the bench was taken by the Master of the Rolls, Sir John Trevor, who acted as the Chancellor's deputy. As time went on, however, and the declining state of his health made his absences more frequent, Jeffreys had recourse, as we shall see, to a special "cause room" built on to his house where he could sit more comfortably.

When Jeffreys accepted the Great Seal in 1685 the Chancellor's equitable jurisdiction extended to many matters upon which the Chancery Division of the High Court adjudicates to-day. But the connexion between equity and the common law, though they sometimes conflicted, was in certain respects closer than between the two corresponding divisions to-day. The Chancellor's Court existed primarily to afford redress which could not be obtained from the common-law courts, such as the King's Bench and Common Pleas, on the other side of Westminster Hall. For example, where it was sought to obtain specific performance of a contract, or to set aside a transaction induced by fraud, or to make a trustee discharge the obligations under his trust, the Chancellor granted the appropriate remedy in the shape of a decree. Chancery practice in the seventeenth century was, however, still largely unformed and subject to considerable variation. The judge was not even bound to follow his own rulings or those of his predecessors. "He was to make decrees according to his own conscience," said Jeffreys, stating the course which he himself adopted in common with the other Chancellors of the period, "and every case was to stand on its own bottom."²

¹ *Home Counties Magazine*, xii (1910), 96.

² T. Vernon, *Reports*, ii, 74. The development of Chancery practice during this period is comprehensively dealt with by Sir William Holdsworth in his

The peculiarly technical Chancery procedure by way of bill, with its accompanying list of interrogatories to be answered by the defendant and the resulting pleas, demurrers, replies, and rejoinders, which ordinarily passed between the parties, was both cumbersome and prolix; and the interlocutory stages of a suit, as these preliminaries are called, involved prodigious delays. The attendant costs and fees were often extortionate, while some of the Chancery officials were not above filling their pockets from the funds in their keeping. The chronicler Luttrell gives an example of a particularly vexatious bill which came before the great Lord Keeper Nottingham in 1682 and was filed against five hundred persons—the bill contained over three thousand sheets of paper, and would have cost each defendant £100 to copy, had not the Lord Keeper rightly dismissed it, at the same time ordering counsel “whose hand was to it, to pay the defendants the costs they have been at.”¹ Under Nottingham, “the father of English Equity,” some definite system of rules governing Chancery practice had, it is true, begun to take shape, but the Chancellor’s court remained essentially a court of conscience, and the relief which it afforded was in the discretion of the judge. Equity was still, in Selden’s famous phrase, “a roguish thing,” because it might vary with the length of the Chancellor’s foot.

With his accustomed vigour Jeffreys set about attacking the abuses of the Chancery. The very first case which he decided as Chancellor established a wholesome reform, which was later embodied in a Law Reform Act passed in the reign of Queen Anne. A plaintiff used to file a bill in Chancery with the deliberate intention of ruining the defendant. After the usually long and expensive interlocutory proceedings the plaintiff would dismiss his bill just before the case was due to come on for hearing, thereby incurring nominal costs for himself, but putting the defendant to great expense in respect of interrogatories, witnesses, replies, and so on. Jeffreys determined to put an end to this pernicious practice. “He would not,” so he said, “allow of the rule dismissing a bill with 20s. costs; but that for the future the defendant should

History of English Law, vol. vi (1903). See also *An Historical Sketch of the Equitable Jurisdiction of the Court of Chancery*, by Sir D. M. Kerly (1890), and *An Introduction to the History of Equity*, by H. Potter (1931).

¹ Luttrell, i, 197.

have the costs he should swear he was out of purse; but in such affidavit he must specify the particulars that the court may judge of the reasonableness of them, if there should be occasion." The Chancellor accordingly directed that the defendant should be allowed all the costs he had incurred, to be properly ascertained by an officer of the court.¹

Jeffreys did not promulgate any large body of rules, but he did issue a number of useful directions from time to time which checked acknowledged abuses like that mentioned. In particular he sought to rectify delays caused by applications for rehearings of suits and for the evidence of material witnesses resident abroad to be taken on commission.

Roger North, who naturally considered that Jeffreys' qualities as a Chancery judge compared unfavourably with those of his late brother Guilford, tells us that Jeffreys

came to the Seal without any concern at the weight of the duty incumbent upon him; for at the first, being merry over a bottle with some of his old friends, one of them told him that he would find the business heavy. "No," said he, "I'll make it light."

However that may be, we know that Jeffreys quickly turned his attention to the corrupt practices of some of the Chancery officials. Within a month of his appointment Luttrell reported that "the Lord Chancellor hath fell foul upon several practicers in the Chancery; he committed a register, two or three clerks in Chancery, and a lawyer or two to the Fleet, and suspended a Master in Chancery from his place." He took a particular pleasure, so Roger North tells us, "in mortifying fraudulent attornies, and would deal forth his severities with a sort of majesty." Nor did it make any difference that these attorneys had been old clients of his and had given him work in his early days at the Bar. Talking of Jeffreys, one such attorney was stated to have said, "I made him," meaning that he had been the first to bring Jeffreys substantial business. "Well," said the Chancellor, when he heard this, "then I will lay my maker by the heels." With that the attorney was ordered off to gaol, but the story goes that Jeffreys, to show he bore the man no malice, entertained him to dinner on the day of his committal.²

Many of Jeffreys' decisions as Chancellor have been reported

¹ Vernon, i, 334.

² Campbell, iii, 583; Luttrell, i, 363; North, *Lives*, i, 288-289.

by Vernon, the Chancery reporter—it must be admitted not very adequately.¹ As they stand, however, they are, in the words of the late Lord Birkenhead,

sufficient to justify the contention that, both at law and in equity, his conclusions do not differ markedly from those of judges against whose legal knowledge no criticism has been urged. They do not show a grasp of principle such as enabled judges like Coke, Hale, Holt, Mansfield, and others to determine the broad road of legal principle. They are rather decisions on the facts of the case, and prove that he was unusually competent to see the real point and to decide it properly and fairly.²

Let us take a few examples which illustrate his style and manner of handling a suit. *Phillips v. Vaughan*, one of the earliest cases which he determined, concerned the assignment of a mortgage.³ The facts were these: A mortgagor mortgaged land to a mortgagee. The defendant took an assignment of the mortgagee's interest for less than was really due on the mortgage, and the heir of the mortgagor brought his bill against the assignee to redeem. The question was whether the heir of the mortgagor should be allowed to redeem the mortgage for the sum which the assignee had given to obtain a transfer. Jeffreys held that the heir of the mortgagor must pay the original amount in full. "This case has neither point nor edge," he said; "for there is no colour why, when the heir of the mortgagor comes to redeem the mortgage, he should not pay the whole that is due on the mortgage. If another man has met with a good bargain there is no equity for the heir of the mortgagor to deprive him of the benefit of it and make an advantage thereof unto himself."

In *Holley v. Weedon* the question of personal liability in respect of a debt was discussed.⁴ The plaintiff had got a verdict at common law against Robert Weedon, the defendant's father, but Robert died "before the day in banc" (*i.e.*, before final judgment). The plaintiff now filed a bill against Robert's son, the defendant. "Dismiss the bill," said Jeffreys; "there is no colour of equity in the case, unless you will have it that

¹ See *Cases argued and adjudged in the High Court of Chancery, originally published by Order of the Court; from The Manuscripts of Thomas Vernon, Esq., 1680-87* (third edition, 1828), vol. i, p. 336, to vol. ii, p. 90.

² *Fourteen English Judges*, p. 96.

³ Vernon, i, 336.

⁴ *Ibid.*, i, 400.

Robert died maliciously before the day in banc on purpose to defeat the plaintiff of his debt."

In *Capell v. Brewer* he denounced a prevalent abuse whereby persons liable to account to the King in respect of public funds, such as farmers of excise, were able to use the Crown's prerogative power of summary execution to collect their private debts.¹ "It is become a common practice," he said, "and a great oppression in the City that any accountant to the King shall sell wines upon credit at an extravagant price, and when a man fails an execution comes as the first process out of the Exchequer at the King's suit and sweeps away all, so that all other just creditors are defeated and a bankruptcy rendered ineffectual." In this case the excise farmer was ordered to refund the money with costs. It was not, however, till the reign of George IV that the practice in this respect was definitely altered.

Fowke v. Hunt also concerned the City of London and established an authority.² A citizen died leaving a widow and several grandchildren, but no children. By the very admirable custom of the City the children of a freeman were entitled to a third share in his personal estate, and if he made a will the citizen was obliged to dispose of his property in this manner. The question here was whether grandchildren were so entitled. After taking time to consider, and consulting with the Recorder and a number of aldermen, Jeffreys held that they were not. The case was upheld and followed in the eighteenth century.

Firebrass v. Brett was an interesting case which gave the Chancellor an opportunity of considering the implications of gaming.³ Brett and Sir William Russell dined with Sir Basil Firebrace at his house, and after dinner they won £900 from Sir Basil at hazard, though Brett and his partner had only eight guineas between them when they started to play. Sir Basil then, "being somewhat inflamed with wine, brought down a bag of guineas containing about £1500, and Brett won that money also." As Brett was going away Firebrace and his

¹ Vernon, i, 469.

² *Ibid.*, i, 397. The legal documents in this case were among the Jeffreys Papers offered for sale by Sotheby's in February 1936.

³ *Ibid.*, i, 489, ii, 69. Sir Basil Firebrace (or Firebrass) was a son of Henry Firebrace, who assisted Charles I in his attempt to escape from Carisbrooke Castle. He was elected sheriff and knighted in 1687, and created a baronet in 1698.

servants seized the money. Firebrace subsequently prosecuted Brett for playing with loaded dice. This trial resulted in an acquittal, and Brett thereupon sued Firebrace at common law for the money. Firebrace retorted by applying in Chancery for an injunction staying the action. The bill alleged fraud in that Brett had cheated and plied Firebrace with drink. The Chancellor declared that "he thought it a very exorbitant sum to be lost at play at one sitting between persons of their rank, and that he would discourage as much as in him lay extravagant gaming." He went on to cite a case concerning a wager which came before Lord Chief Justice Hale in the King's Bench, in which the Chief Justice observed that "those great wagers proceeded from avarice and were founded in corruption." If such discouragement was given to gaming at common law, Jeffreys argued, "it might much more so be done in a Court of Equity." In view of this opinion of the court the parties decided to settle the case on the basis that each side kept what he had.

When deciding the more complicated cases which came before him Jeffreys had the good sense to consult his brother judges, whom he invited to accompany him on the bench. In particular in *The Attorney-General v. Vernon* and *The Earl of Kildare v. Eustace*, in both of which he delivered the judgment of the court, he appears to have shown remarkable learning, although its effect has been considerably minimized by bad reporting.

Briefly the principle laid down in *The Attorney-General v. Vernon* was that a grant of lands by the Crown might be set aside on the ground of fraud.¹ Here Jeffreys took the opportunity of criticizing the Crown's lavish grants of lands to patentees. "He could wish," he said, "that the Crown had not parted with so many flowers as it hath already done, and then he was persuaded there would not have been so many rebellions as there have been."

In *The Earl of Kildare v. Eustace* the important question of whether a trust in Ireland could be enforced against trustees in England was considered.² At first Jeffreys was doubtful whether he had jurisdiction, but after hearing the learned argument of Sir John Holt and consulting with the other judges he decided that he had, and gave a decree accordingly. This decision, which, it may be added, applies the well-known

¹ *Vernon*, i, 370.

² *Ibid.*, i, 405, 419, 423, 428, 437.

maxim that "Equity acts *in personam*," has frequently been followed in the past.

In only one case was an attempt made to upset any of his decrees, and then it was unsuccessful. In *The Earl of Pembroke's Creditors v. Lady Charlotte Herbert* the question he had to decide was whether a large sum of money left by the late Lord Pembroke belonged to his daughter or to his creditors. The case was complicated for Jeffreys by the fact that his own son John was engaged to marry Lady Charlotte Herbert, and, therefore, stood to gain or lose considerably as the result of the decision. What had happened was that the reprobate seventh Earl of Pembroke (believed now to be the real murderer of Sir Edmund Godfrey) had during his lifetime demised his estates to trustees, who had in turn redemised them to him for a term of years at a nominal rent. On his death he left bond debts to the value of £9000 and book and contract debts to over twice that amount. Jeffreys decided that only the bond debts were recoverable by Lord Pembroke's creditors, but before delivering judgment he obtained the concurrence of three brother judges—the Master of the Rolls, Sir John Trevor, Mr Justice Lutwyche, and Mr Baron Powell.

The decree was upheld after the Revolution, first by the Commissioners of the Great Seal and then by the House of Lords.¹ At the time, however, the Chancellor was much abused, and a little verse about the incident went the rounds of the town:

Old Tyburn must groan,
For Jeffreys is known
To have perjur'd his conscience to marry his son.

VI

Although his decisions in Chancery embodied some sound law as well as characteristic common sense, and although he enjoyed the somewhat doubtful reputation of having none of his decrees subsequently reversed, Jeffreys was not an outstanding equity judge in the sense that Nottingham before him and Somers after him were. Apart from punishing some corrupt practices, which he discovered at the outset of his Chancellorship, and issuing a number of rules to reform a few

¹ Vernon, ii, 51, 213; Woolrych, p. 344.

other abuses, he was too much occupied with politics and personal matters, notably his declining health, to continue Nottingham's work of reducing equitable doctrines to a coherent system or to leave his mark in other ways upon the practice in his court.

To the almost constant pain which he suffered from the stone and his pathetic attempts to relieve it must be attributed his ferocious temper and appearance on the bench, which led many onlookers to assume (not always correctly) that he was drunk. Both counsel and suitors daily felt the lash of his tongue. Roger North, who had built up a large Chancery practice under his brother, the late Lord Keeper Guilford, came into such repeated conflict with Jeffreys that his appearances in his court became fewer and fewer, and his practice "declined so as to be scarce worth my attendance." The trouble with Jeffreys, said North, was that, although "he talked fluently and with spirit, he could not reprehend without scolding, and in such Billingsgate language as should not come out of the mouth of any man." This the Chancellor called "giving a lick with the rough side of his tongue." It was quite common for him to say to some unlucky individual, "Go; you are a filthy, lousy, nitty rascal." As time went on scarcely a day passed that he did not fall upon somebody and castigate him roundly, and (says North) "it was commonly a lecture a quarter of an hour long." Practisers in the court would look at each other and say, "This is yours; my turn will be to-morrow."¹ To do him justice, however, it must be admitted that his wrath usually fell upon individuals who richly deserved it.

Roger North has also accused Jeffreys of neglecting the business of the court and only putting in such time at Westminster Hall as he thought fit to spare from other interests. Here North is manifestly unfair to Jeffreys, for there is little, if any, foundation for this charge. On the contrary, Jeffreys had a special "cause room" constructed in his house so that he could dispatch business with greater ease, though even here suitors complained of having to wait as long as five hours in a morning, and then witnessing the Chancellor "come out inflamed and staring like one distracted." In other respects,

¹ North, *Lives*, i, 288, iii, 105.

however, North's strictures are supported by known facts. Nevertheless, North, as we have already seen, thought well of his judicial powers when Jeffreys chose to exercise them fairly: "When he was in temper and matters indifferent came before him, he became his seat of justice better than any other I ever saw in his place." To this may be added the view taken by an eighteenth-century Master of the Rolls, Sir Joseph Jekyll, that "he had likewise great parts, and made a great Chancellor in the business of that court. In mere private matters he was thought an able and upright judge wherever he sat."¹

An ineffaceable memory of Jeffreys at this period in the mind of Roger North and every one else who had business in the Chancery was his truly terrifying appearance and voice. Real offenders might well tremble before him, for it was "as if the thunder of the day of judgment broke over their heads; and nothing ever made men tremble like his vocal inflictions."

One last incident of his conduct in this connexion must be recalled, for, as we shall see, it led to his eventual undoing. A scrivener from Wapping, said to have been called Burnham, was defendant in a suit in which the plaintiff sought relief under a bottomry bond. Jeffreys was about to dismiss the bill with costs when plaintiff's counsel observed that the defendant was a strange fellow, who sometimes went to church and sometimes to conventicles. No one knew what to make of him, and, in short, "it was thought he was a trimmer."

At the mention of the word "trimmer" the Chancellor flared up. "A trimmer!" he said, his eyes glowing with excitement. "I have heard much of that monster, but never saw one." Then, turning to the defendant, he went on, "Come forth, Mr Trimmer; turn you round and let us see your shape."

The unfortunate defendant stood up, conscious that he was the centre of unwelcome attention, and the Chancellor ranted on at him. Somewhat to his surprise, however, the bill was dismissed.

As the scrivener passed through the hall outside the court a friend stopped him and asked him how he came off. "Came off?" he said, still trembling. "I am escaped from the terrors of that man's face which I would scarce undergo again to save my life; and I shall certainly have the frightful impression of it as long as I live."

¹ Burnet, ii, 389 n.

THE ECCLESIASTICAL COMMISSION

JAMES II's weapon with which he hoped to coerce the Church of England was the Ecclesiastical Commission. It was launched in July 1686, and was in effect a revival of the old Court of High Commission, declared illegal under the Long Parliament of Charles I, though its terms of reference were somewhat wider. The Commissioners were declared to have absolute control over the government of the Established Church, and were empowered to try all offences punishable by the ecclesiastical laws of the realm, including a number on the part of the laity such as "incest, adulteries, fornications, outrages, misbehaviours, and disorders in marriage." In addition to the Lord Chancellor, who was appointed President, there were three lay Commissioners and three clerical. The laymen were Lord Treasurer Rochester, Lord President Sunderland, and Lord Chief Justice Herbert. The clerical Commissioners were William Sancroft, Archbishop of Canterbury; Nathaniel Crewe, Bishop of Durham; and Thomas Sprat, Bishop of Rochester. The Archbishop, however, pleaded to be excused attendance on the ground of ill-health; his plea was granted by the King, but he was given to understand that he must no longer regard himself as one of his Majesty's advisers. "If he is too sick or too busy to go to the Commission," said James to the Papal Nuncio, whom he had recently received, "it is a kindness to relieve him from attendance at Council." All the other members, out of a mixed desire to preserve the emoluments of their offices and at the same time to please the King, intimated their willingness to serve on the Commission, but two at least, Jeffreys and Rochester, did so with inward reluctance and qualms of conscience.

The Commission sat in the Council Chamber in Whitehall, and the first delinquent to be summoned to appear before it was Henry Compton, Bishop of London.¹ Although Compton had exercised considerable influence at the Court of Charles II

¹ Howell, *State Trials*, xi, 1123.

and had officiated at the marriage of both James's daughters, Mary and Anne, to the foreign princes of their choice, he had on the change of sovereign boldly declared against the new King's use of the dispensing power. A little later a well-known clergyman in his diocese, Dr John Sharp, preached a vigorous sermon against Roman Catholicism. Sunderland thereupon informed the Bishop that it was the King's pleasure that Sharp should be suspended. Compton refused to comply with this request, although he privately instructed Sharp to abstain from preaching for the present. Accordingly, on August 4, 1686, the Bishop appeared before the Commissioners to answer the charge of disobeying the royal command.

"My Lord Bishop of London," said Jeffreys to him, opening the Commission, "the lords here present have received orders from the King to inspect all ecclesiastical affairs and persons, and he hath commanded us to cite you before us; and I desire you will give a positive and direct answer. What was the reason you did not suspend Dr Sharp when the King commanded and sent you express orders so to do, and told you what it was for?"

Compton replied that he had no intention of affronting the King, but he had taken advice, and he did not think he could legally suspend Sharp without first calling him before the usual Ecclesiastical Court and hearing what he had to say.

To this argument the Chancellor retorted by quoting the Latin proverb to the effect that ignorance of the law affords no excuse for its infringement. "You ought to have known the law," he added, "and it was a wonder you did not. The King is to be obeyed, and if you have any reason to show in this particular we are ready to hear you."

"I knew not what would be laid to my charge," said the Bishop, addressing the court, "and therefore was not provided to make such a defence as I might have done. But if your lordships will give me a copy of your commission and a copy of my charge I will endeavour to give your lordships satisfaction."

Jeffreys was quick to sense the tactics of this gambit. "My lord," he remarked, "I would not misinterpret your words, but shall desire you to explain their meaning. If by desiring a copy of our commission you design to quarrel with the jurisdiction and legality of the court I have another answer for you.

But till I know your meaning here my answer is that no copy of the commission can be granted, and it is unreasonable to desire it. It is upon record; all the coffee-houses have it for a penny apiece, and I doubt not but your lordship has seen it."

These observations annoyed the Bishop, who was not in the habit of spending his time in coffee-houses, and he answered hotly that he had never seen it, nor did he require it for the purpose which the Chancellor suggested.

"Your lordships know it is a thing altogether new to this generation, and it may be something may be found in it whereby I may be instructed and directed in my answer and behaviour in the matter." He then asked, if he could not have a copy, to be allowed to see it or at least to hear it read. To this last request Jeffreys replied that he would have to consult his colleagues, and the Bishop consequently withdrew for a short time.

When the Bishop returned to the Council Chamber a quarter of an hour later Jeffreys told him that in the opinion of the Commission his request was unreasonable and could not be granted. Otherwise "all our times will be spent in reading, and we have something else to do." In any case, the Chancellor went on, "proceedings in courts of this kind" were never by written articles, but by word of mouth only. "It is a short question I ask. Why did you not obey the King?"

"It is a short question, but requires more words to answer it," said Compton, and he went on to ask for some time to prepare his defence. He suggested an adjournment until the beginning of next term, since most counsel were away from town on circuit. The Chancellor replied that his Majesty's business would not admit of such delays, but that he could have a week.

Accordingly the Commission adjourned for a week. When the Commissioners reassembled Compton was asked for his answer to the Chancellor's original question. Again he played for time. He said he had employed the whole week in searching for the commission which the Chancellor had told him was in every coffee-house, and had only succeeded in laying hands on a copy the previous night. "If your lordship doubts the truth of this," he added, "I have the person ready to make oath here of it."

"My lord," said Jeffreys, "you are a person of honour, and we will not question the truth of what you say; there needs no oath. But, my lord, I must tell you we will not admit of any quarrelling with our Commission. We are well assured of the legality of it; otherwise we would not be such fools as to sit here."¹

"My lord," urged the Bishop, "I have other reasons why I desire a sight of your commission. It may be it may not reach me, being a peer and a bishop; and it may be it may not reach this particular case." As he uttered these words a friend of his who had accompanied him, Sir Thomas Clarges, shouted out, "Well put! Well put! My lord speaks nothing but the truth."

The Chancellor ignored this interruption, while Compton went on to ask for a further adjournment. Jeffreys was inclined to be lenient, but wanted to know how long. "I hope a fortnight will not be unreasonable," said the Bishop.

"Agreed. You shall have until to-morrow fortnight in the morning." Then, as the Bishop and his friends turned to leave, Jeffreys thought he had better apologize for his remark about the coffee-houses. "My lord," he said, "when I told you our commission was to be seen in every coffee-house I did not speak with any design to reflect on your lordship, as if you were a haunter of coffee-houses. I abhorred the thoughts of it, and intended no more by it but that it was common in the town."

On the occasion of his next appearance in Whitehall the Bishop of London repeated his previous objections to the jurisdiction of the Commission, and he was again checked by the Chancellor, but with remarkable forbearance and good temper. He further doubted whether the Commissioners could properly inquire into matters at issue before its creation. Jeffreys conceded a point here, "but there are general clauses," he pointed out, "that take in things that are past as well as those that are to come."

The Bishop had brought with him several experts in ecclesiastical law from Doctors' Commons, and these learned

¹ Cf. H. Paman to Sir R. Verney, August 17, 1686: "The Lord Chancellor was very gentle and easy to him" (Hist. MSS. Comm., Report VII, *Verney Papers*, p. 503).

authorities were now allowed to address the court on the Bishop's behalf. While they were speaking Compton noticed Dr Pinfold, the King's advocate, standing beside the Chancellor and taking notes, which the Bishop thought at first might be to assist him in replying to the arguments. But Dr Pinfold said nothing, which moved the Bishop to speak. "My lord," he said, "I desire that care may be taken concerning the minutes, which are taken by the clerks, of what hath passed, and that I may not be misrepresented to the King by the mistake of the penman."

"You need not fear it," Jeffreys assured him. "I hope you have a better opinion of us. There shall be no advantage taken by them or us."

The Commissioners decided to reserve their judgment, and requested the Bishop to appear a fortnight later to hear it. "To prevent mistake," Jeffreys told him on the appointed day, "we have ordered it to be put in writing."

The Bishop made one last protest, "My lord, may I have leave to speak before sentence is read?"

"My lord," replied the Chancellor, "we have heard you and your counsel already."

The clerk then read out the sentence, which was that the Bishop of London was suspended and required "to abstain from the function and execution of his episcopal office." This judgment, it may be added, had not been arrived at without considerable difficulty. At first the Commissioners had been divided in their opinion. Rochester, Herbert, and Sprat had been for an acquittal, while Jeffreys, Sunderland, and Crewe had been for suspension. The King is said to have intervened at this stage and made it clear to Rochester that if he did not change his mind he would cease to hold the lucrative office of Lord Treasurer. The result was that Rochester thought it best to comply with the King's wishes.

Another remarkable feature about the judgment was that none of the Commissioners dared to put his name to it. The document was simply sealed with the seal of "His Majesty's Commission for Ecclesiastical Causes." Jeffreys, for one, realized that should Parliament meet again anyone whose name appeared on such a document would almost certainly be called to account for his signature, and might expect little mercy.

II

Jeffreys used to assert—and he continued to do so even on his deathbed—that he accepted the Presidency of the Ecclesiastical Commission with the idea of reviving, and not destroying, the Church of England. Be that as it may, the existence and working of the Commission constituted a threat to the foundations of the established religion, and as the months passed it became more and more evident that James merely regarded the Commission as a useful instrument in encompassing the overthrow of these foundations. Not even family ties counted with the obstinate monarch when they ran counter to his spiritual aims. His brother-in-law Rochester atoned for whatever weakness he had shown in the matter of Dr Sharp's suspension by refusing to embrace the Roman Catholic faith. As a result he was dismissed from the post of Lord Treasurer. The Treasury was thereupon put in commission, the three principal Commissioners being the Catholic Lords Powis, Belasyse, and Dover. Rochester's brother Clarendon was likewise relieved of his proconsular duties in Dublin, and the Catholic Earl of Tyrconnel sent over in his stead. The judicial Bench suffered similar changes. The Tory Wythens received his quietus in the very act of unbuttoning his doublet one night, "very well content with himself and his conscience." His place was taken by Richard Allibone, a fiery and ambitious Catholic who is credited with knowing less law than Wright. Incidentally, Wright was elevated to the post of Lord Chief Justice in the place of Herbert, who was removed for having refused to pass the death sentence on a soldier who had deserted from the colours.

To aid him in his campaign against the English Church James sought the alliance of his old enemies the Dissenters. On April 4, 1687, he issued his famous Declaration of Indulgence, granting freedom of worship to every form of religion in the country. Jeffreys could not bring himself to sign this document, although a meeting attended by Lord President Sunderland and several Bishops took place at the Chancellor's house for the purpose of considering their attitude to it. Sunderland and the servile Bishops of Oxford and Chester signed; Jeffreys and the more independent Bishop of Rochester refused. Not

content with this measure of toleration, the King proceeded to admit Nonconformists to municipal offices and the commissions of the peace. Jeffreys, whose equanimity was profoundly disturbed by these actions, had the mortification of seeing old Tory friends like Sir Robert Geffery and Sir John Moore turned out of their places as aldermen and replaced by inveterate enemies. Dissenters of various denominations entered the Corporation, and for the ensuing year a Presbyterian, Sir John Shorter, was actually elected Lord Mayor. In the counties the work of purging the benches of lay magistrates of Tories and replacing them with Catholics and Dissenters was entrusted to the Lords-Lieutenant, who were themselves dismissed if they proved recalcitrant. For this purpose Jeffreys suddenly found himself appointed Lord-Lieutenant of Buckinghamshire and also of Shropshire.¹ He had, it is true, considerable territorial influence in both these counties, but he was somewhat naturally reluctant to employ it against the Tories and High Churchmen who had previously looked to him for support in such localities as Bulstrode and Wem.

The next Tory strongholds to receive the King's unwelcome attentions in the person of his Chancellor and Ecclesiastical Commission were the universities. The first to suffer was Jeffreys' old university, Cambridge, whose academic authorities had refused to obey the royal mandate requiring them to admit a Benedictine monk to the degree of Master of Arts without administering the usual oaths. On April 21, 1687, a delegation from the Senate of the university attended upon the Commissioners in Whitehall.² This delegation was headed by the Vice-Chancellor, the timorous and red-nosed Dr John Peachell, and his colleagues included the university's distinguished Professor of Mathematics, Isaac Newton, who had been an undergraduate at Trinity at the same time as Jeffreys.

When the summons was read Jeffreys addressed the quaking Dr Peachell: "Now, Mr Vice-Chancellor, why did you not obey his Majesty's command in behalf of the gentleman mentioned here?"

Dr Peachell was plainly nervous and unprepared. A silence

¹ The Earl of Bridgewater was dismissed from the Lieutenancy of Buckinghamshire and Viscount Newport from that of Shropshire.

² Howell, *State Trials*, xi, 1315.

followed, but at last he managed to stammer out an answer: "My lord, you inquire of me why I did not admit Mr Francis according to the King's letter?"

"Yes, that's the question I ask you."

Peachell was unwilling to commit himself, so he tried to hedge. "Is this the only question your lordship is pleased to ask me?"

"Nay, Mr Vice-Chancellor," said Jeffreys sweetly, "we will not capitulate in the very beginning. Pray answer the first, and then you shall know what we have to say more."

"My lords, I beg time to answer you," Peachell humbly pleaded. "I am a plain man not used to appear before such an honourable assembly, and if I should answer hastily it may be I might speak something indecent or unsafe which I should be afterwards sorry for. Therefore, I beg leave, my lords, to have time allowed us for giving in such answer as may be both for our safety and your lordships' honour."

"Why, Mr Vice-Chancellor," said Jeffreys, smiling, "as for your own safety, my lords are willing you should take all the care you can. But for what concerns our honour do you not trouble yourself; we are able to consult that without any interposition of yours."

Peachell and the other members of his delegation were given a week in which to compose their reply. They then questioned the jurisdiction of the court, and cited so many authorities in their support that the Commissioners were obliged to order a further adjournment of a month. When the delegates reappeared in Whitehall Jeffreys was not so gentle with them as on the occasion of the first hearing. To Dr Cook, a Fellow of Jesus College and a Doctor of Civil Law, who interrupted the examination of the Vice-Chancellor with an observation about the university practice in conferring degrees, Jeffreys said, "Nay, good Doctor, you never were Vice-Chancellor yet. When you are we may consider you." A Fellow of Jesus was similarly reproved: "That young gentleman expects to be Vice-Chancellor too. When you are, sir, you may speak, but till then it will become you to forbear." Poor Dr Peachell was so nervous that he was unable to repeat correctly the words of the Vice-Chancellor's oath, and he had to be prompted by his friend Dr Cook. "Nay, good Doctor," said Jeffreys to the prompter. "How came you, who never were Vice-Chancellor

and so never took this oath, to know it better than one that is Vice-Chancellor and hath taken it?" As for Peachell's lapse of memory, Jeffreys animadverted strongly on it. "I am really concerned," he said, "for the University of Cambridge, whereof I myself was once a member, that the Vice-Chancellor, who is the head and the representative of so learned a body, should come here before the King's Commissioners and not be able to give an account of the oath by which he acted all this time, but desires counsel and time to tell what the oath is."

The upshot was that Dr Peachell was adjudged by the Commissioners guilty of disobedience to the King's commands, and was ordered to be deprived of the Vice-Chancellorship and also the headship of Magdalene College, whose Master he was. His colleagues on the Senate were excused with a salutary admonition.¹ "Gentlemen," said Jeffreys to the departing delegation, "your best course will be, by a ready obedience to his Majesty's command for the future and by giving a good example to others, to make amends for the ill example that has been given you. Therefore I shall say to you what the Scripture says, and rather because most of you are divines—go your way and sin no more, lest a worse thing come unto you."

In the case of the sister university the Commissioners went further; their proceedings resulted in despoiling a lucrative foundation of its revenues, and were such as to cause a general outcry—not only in Oxford, but throughout the country. Although Jeffreys for various reasons, which will become apparent, participated actively only in the earlier stages of this drama, he cannot as President of the Ecclesiastical Commission be relieved of a great share in the responsibility for one of the most arbitrary acts ever committed by King James II.

"Magdalen College at Oxford, founded in the fifteenth century by William of Waynflete, Bishop of Winchester and Lord High Chancellor," to quote Macaulay's vivid description,

was one of the most remarkable of our academical institutions. A graceful tower, on the summit of which a Latin hymn was annually chanted by choristers at the dawn of May day, caught far off the eye of the traveller who came from London. As he approached, he found that this tower rose from an embattled pile,

¹ Burnet's statement (*History of His Own Times*, iii, 142) that throughout the hearings Peachell "was treated with great contempt by Jeffreys" is quite untrue, as the account given here shows.

low and irregular, yet singularly venerable, which, embowered in verdure, overhung the sluggish waters of the Cherwell.¹

This society, which consisted of a President, forty Fellows, various scholars on the foundation known as demies, and a goodly band of choristers, was reputed to be wealthier than many abbeys on the Continent. In March 1687 the society lost its President, who died. Shortly afterwards the Bishop of Oxford gave the Fellows, whose duty it was to elect a successor, to understand that the King would not countenance any President who was not a Catholic. In due course the royal mandate arrived directing the Fellows to elect a man named Anthony Farmer, who was not even on the foundation of the college, and therefore ineligible by the statutes, which required the President to be a Fellow of either Magdalen or New College. He had only come up to study as an undergraduate at Magdalen some years previously, after being expelled for misconduct from Trinity College, Cambridge. Farmer was, in addition, a recent convert to Catholicism and a person of the lowest moral character, a depraved libertine given to drink and worse vices. Such a reprobate was he that Jeffreys, on behalf of the Ecclesiastical Commissioners, was ultimately obliged to tell him that "the Court looked on him as a very bad man."²

The Fellows sent a dignified letter of protest to the King, and as they had received no reply by the latest day on which the College statutes required them to elect a new President, they met and proceeded to vote one of their own number, Dr John Hough, into the vacant post. In due course the Fellows were summoned before the Court of Ecclesiastical Commission to answer for their disobedience, and on June 6 a deputation headed by the Vice-President, Dr Charles Aldworth, attended upon the court in Whitehall. The usual question as to why the college had not carried out the King's commands met with the usual reply on the part of the Vice-President, that he would like to take legal advice before putting in a formal answer. Jeffreys showed signs of tiring of this procedure. "That is like a man of your coat," he told Aldworth, "first to do an ill

¹ ii, 934.

² J. R. Bloxam, *Magdalen College and King James II* (1886), p. 91. Cf. H. Paman to Sir Ralph Verney, August 2, 1687: "The Lord Chancellor was against him too. . . . I suppose he is laid aside" (Hist. MSS. Comm., Report VII, *Verney Papers*, p. 504).

thing, and then to advise with counsel how to defend it." The Chancellor concluded by telling the delinquent that "the Commission would not be so hasty in adjudging him as he had been in disobeying and contemning the King's authority, and therefore bidding him bring the statutes with him, gave him till Monday next."

The reply which the Fellows submitted in writing on their reappearance before the Commission was to the effect that the statutes of their college prevented them from giving effect to the King's recommendation. Jeffreys was quick to notice that one of the Fellows, Dr Fairfax, had not signed the reply, and thought he detected an ally. "This looks like a man of sense and a good subject," he said. "Let's hear what he will say." The Chancellor soon regretted he had spoken, for Dr Fairfax bearded him courageously and challenged the jurisdiction of the court. Jeffreys remarked angrily that the Fellow was a Doctor of Divinity, and not of Law.

"By what commission or authority do you sit here?" asked the undaunted Doctor.

"Pray, what commission have you to be so impudent in court?" rejoined Jeffreys. He looked round the Council Chamber at the other members of the delegation in a fury, and then continued, "This man ought to be kept in a dark room. Why do you suffer him without a guardian? Pray let the officers seize him."

On June 22 the Fellows attended to hear the sentence of the Commission, which Jeffreys pronounced—Aldworth and Fairfax to be suspended from their Fellowships, and the office of President, to which Dr Hough had recently been elected, to be vacant. But, in view of the information before the court of Anthony Farmer's character, "that any modest man would blush to hear and any one this side of hell to be found guilty of," nothing further was said about his candidature.

III

Jeffreys took a new house about this time, so as to be nearer Whitehall. "The Lord Chancellor," noted Luttrell in his journal for April 1687, "is removed from his house in Queen Street to a house in Westminster overlooking St James's Park."

This fine mansion of dark brick was situated in Duke Street,¹ "just against the bird-cages in St James's Park"; it had lately been erected by a certain Moses Pitt, a publisher who had turned his hand to speculative building, and the Chancellor was its first tenant at an annual rent of £300, which was a considerable charge for house property in those times. Like Conway House, in Lincoln's Inn Fields, which the Chancellor, together with his large family and staff, vacated, it had a garden and ample coach and stabling accommodation. Some of the rooms had been conveniently fitted with secret sliding panels.²

When he first came to inspect the property with a view to taking it Jeffreys, who was accompanied by his friend Alderman Duncombe, the banker, noticed an "idle piece of ground" lying between the back of the house and the park. The Chancellor thereupon told Pitt that "he would have a cause room built upon it." Pitt said that the ground was the King's; the Chancellor replied that he knew it was, but that he would ask it of the King and give it to Pitt. He then instructed his prospective landlord to pull down the park wall and build as fast as he could, "for he much wanted the said cause room." This the landlord proceeded to do, and accordingly constructed a "court room, vault and other conveniences," including a flight of stone steps from the house to the park for the Chancellor's private use.³ Unfortunately for Mr Pitt, as we shall see, Jeffreys promised more than he could perform, for Sir Edward Hales, the Catholic whose acceptance of a commission in the Army had resulted in the famous test case on the validity of the dispensing power, managed to obtain the grant of it from the King in the face of the Chancellor.

Throughout the year 1687, in fact, the Chancellor's influence at Court declined steadily as that of the King's Catholic advisers increased. At one time James intended to advance

¹ Renamed Delahay Street in 1874.

² Luttrell, i, 398; Moses Pitt, *The Cry of the Oppressed* (1691). A full account of the property and its history is contained in a series of articles in *Notes and Queries*, 8th Series, iii (1893), 161, 201, 243, 263. See also T. Pennant, *Tours in Wales* (1883); Wheatley, *London Past and Present*, i, 534; and Fea, *Recollections of Sixty Years* (1926), p. 118. The house, known later as No. 7 Delahay Street, was pulled down in 1892; its site is now occupied by Government offices.

³ These steps survived until 1910 (*Home Counties Magazine*, xii (1910), 99 (with photograph)).

his Chancellor to the dignity of an earldom, and seems to have considered the idea of creating him Viscount Wrexham and Earl of Flint. The rumour that Jeffreys would be the recipient of these honours was so strong that a book and an engraving of his portrait by Kneller both appeared with superscriptions to the effect. But the King, who probably resented Jeffreys' choice of a title from a county which had always formed part of the royal earldom of Chester, was now unwilling to pass the patent, and the result was that the Chancellor remained a baron.¹

"Fresh talk every day of the Lord Chancellor going out"—so ran the gossip of the town. In August it really did seem that he was about to receive his quietus. In that month the King and Queen made a tour of the West, and Jeffreys was commanded to accompany the royal party. It was not a pleasant journey for the Chancellor. They had not penetrated very far when they met with the mangled remains of a number of the sufferers during the Bloody Assizes, which were still exposed to the public gaze on gibbets and posts throughout the countryside. The King, who seems to have received a shock from these horrible relics of the carnage of two years before, ordered them to be taken down and decently interred. Another incident endeared him still less to his former Chief Justice. "At Marlborough," a friend wrote to Sir Ralph Verney,

the Lord Chancellor took down the Queen's bed and set up his own in its place; she dissembled her resentment till she came to Bath, and then showed it so openly and fully that the King sent Lord Dover to discharge him from his office and the Court. . . . Some think Lord Castlemain, others Lord Dover, will succeed him.

However, the trouble was smoothed over, and Jeffreys continued with the party for the remainder of the tour. They ended up at Chester, where James received an unexpected ovation, owing to the fact that he promised the people that there should be a meeting of Parliament in the near future.

This prospect afforded the Chancellor little consolation. It is said that on this occasion he proposed to go over to Acton, but that his father, who was annoyed at his recent conduct on the Ecclesiastical Commission, refused to see him. This story

¹ G.E.C., *Complete Peerage*, v, 534; Hist. MSS. Comm., Report VII, *Verney Papers*, p. 555.

is supported by a passage in one of his brother Thomas's letters written not long afterwards. "Ever since I left England," wrote Thomas to James Jeffreys in Canterbury,

I know my lord hath rubbed through many discontents as well in his domestic as public affairs, and I have heard that our nearest relation hath been much wanting in his obligation, so he hath (poor man) a very hard game to play, and I believe it will be worse if the Parliament meets. I pray God assist him.¹

Another domestic disappointment was the lack of a male heir by Jeffreys' second marriage. His titles as peer of the realm and baronet were, it will be remembered, to go first to any sons he might have by his wife Ann. It was Ann's ill lot that most of her children should be prematurely born. The appearance of their firstborn, a daughter who was given her mother's name, exactly eight months after the wedding had been the topic of malicious tongues. Their second child, Thomas, born in the same year, was probably a seven months' child: he died a very short time after birth. Four daughters followed, Mary, Elizabeth, Christiana, and Ann, the last being so called in place of the eldest daughter, who had died in the meanwhile. About a month before Jeffreys set out on his tour with the King and Queen his wife was delivered of another child—this time a son. But he too seems to have been prematurely born, since he only lived long enough to be given his father's name, George.²

Almost immediately after this loss Ann, Lady Jeffreys, found herself pregnant again. Once more she was doomed to disappointment. Barely seven months later she was delivered of a child stillborn. The sex of this infant is unknown. It was buried in the family vault in the church of St Mary the Virgin, Aldermanbury, and the following laconic entry inserted in the register: "Abortive child of y^e Right Hon^{ble} Lord Chancell^r." This infant was the last they were to have. Of her eight children by Jeffreys only three daughters had survived—Mary, now aged six, Christiana, aged three, and Ann, who was a little over a year old. This meant that her stepson John became heir to the titles, a prospect which gave her ladyship little satisfaction.

¹ Woolrych, p. 324; Jeffreys MSS. (letter dated September 27, 1688); *Home Counties Magazine*, xii (1910), 90.

² *Registers of St Mary the Virgin, Aldermanbury*, Part II. Cf. Hist. MSS. Comm., Report VII, *Verney Papers*, p. 504: "27 July, 1687: . . . The Lord Chancellor has had another son who is dead."

Ann, Lady Jeffreys, seems to have been a scheming and unscrupulous stepmother, and, although the Chancellor remained on good terms with various members of her family, he seems to have been troubled by her lack of interest in the children of his first marriage. On October 15, 1687, Margaret, his eldest daughter by Sarah Neesham, was married at Bulstrode by the Bishop of Rochester to Mr William Stringer, son of an old colleague of Jeffreys' at the Bar, Serjeant Stringer.¹ Margaret Jeffreys could have done worse, since her husband was heir to a manor in Essex and her father-in-law was shortly to be raised to the bench.² But several members of the Jeffreys family thought she might have done better, and blamed Ann for not exerting herself more on her stepdaughter's behalf. "Now," wrote Sir Thomas Jeffreys to brother James,

there is only wanting that poor Sally be accommodated, which I hope you will be assistant in, for she is a mighty modest pretty girl, and I dare say will made a good wife; and if this were effected, I should be much at ease, and so would my lord, I am sure. For the rest, I hope the mother will take good care of them and thereby lessen ours.³

Meanwhile King James was pursuing his headstrong course heedless of any danger to himself or his Chancellor. More Catholics were put into important posts; several more were sworn of the Privy Council, including the Jesuit Father Petre, who openly took his seat at the Board—which made that indignant Protestant Sir John Bramston assert that Petre was the only member of his order on the public council of any prince in Christendom. Sunderland, who had recently gone over to Rome, and Sir Nicholas Butler, another convert, "that had been a stocking merchant and a bankrupt," made up with Petre a junto from which the Protestant Chancellor was necessarily excluded. In the concluding stages of the struggle with Magdalen College James seems to have distrusted Jeffreys,

¹ I.e. Neve, *Pedigrees of the Knights* (Harleian Society (1869), vol. viii), p. 228; Hedgerley parish register (communicated by the Rector, the Rev. D. J. Jones).

² Sir Thomas Stringer owned the manor of Durance, at Enfield (D. Lysons, *The Environs of London* (second edition, 1811), ii, 197-198). On his elevation to the bench see below, p. 294.

³ *Home Counties Magazine*, xii (1910), 90. Sarah (Sally) married Colonel George Harnage, of the Marines, third son of Edward Harnage, Esq., of Belwardyne. She died in 1707. Her elder sister Margaret, who married William Stringer, died in 1727. Both sisters are buried in St Mary's Church, Aldermanbury.

for the Chancellor was not fully consulted. Nor was he a member of the sub-committee of the Court of Ecclesiastical Commission which went down to Oxford to install the Bishop of Oxford as President. (James had obviously not been able to proceed with Farmer's candidature.) On the other hand, when on December 12 the proposal came before the Court of High Commission to expel all the Fellows who would not make a formal submission to the new President the numbers on either side of the chair were evenly divided, with the consequence that Jeffreys gave his casting vote in favour of expulsion.¹

During the last few months of this year the Chancellor's position was still far from secure. Besides the King's coolness, Jeffreys had to face an intrigue on the part of the leading Catholics at Court to get rid of him altogether. Lord Castlemaine had recently returned from a mission to Rome, where he had failed to secure for Petre a cardinal's hat, which he had been instructed by the King to obtain for his favourite confessor. Another post had to be found for Castlemaine, and the rumour that he was going to Ireland as Viceroy disturbed Tyrconnel. Clarendon's successor in Dublin wished to remain in Ireland, and he asked Petre for his assistance. It was then proposed to Castlemaine that he should become Lord Treasurer, and the Catholic Lords of the Treasury should be made Commissioners of the Great Seal. This meant that Jeffreys would have to go. The arrangement is said to have been approved by the Cabinet on December 17, 1687. Father Petre openly accused Jeffreys of double-dealing in the affair of Magdalen College "and of backwardness in other instances to the prejudice of the Catholic cause." However, the Catholics suddenly began to differ among themselves. A quarrel had recently broken out between Louis XIV and the Pope. Castlemaine sided with his Holiness, but Sunderland, Petre, and Tyrconnel were for the French King. The result was that the project for advancing Castlemaine at Jeffreys' expense was dropped, and the Chancellor was even able to profit by this incident and recover some of his former favour at Court. According to one authority, this rehabilitation was largely due to the united efforts of Sunderland and the Queen.²

¹ Bloxam, *Magdalen College and King James II*, p. 222.

² J. Oldmixon, *History of England* (1730), pp. 744-745.

While this intrigue was proceeding the Chancellor was involved in another dispute of a different kind, which concerned the world of music and is worth recalling. The Temple Church, the interior of which had recently been restored by Wren, was in need of an organ. At this time there were two noted organ-builders in England, Renatus Harris, a Frenchman, and Bernard Schmidt, commonly known as Father Bernard Smith, who was of German origin, and had not long before built an organ for Westminster Abbey. Both these artificers constructed instruments, but the Temple Societies could not arrive at a unanimous opinion as to which of the two should be chosen. The Inner Temple favoured Harris's, but the Middle inclined to the work of Smith. Both makers received permission to set up their organs in the church—Harris's on the south side of the communion table and Smith's in the north transept. Various tests were made. Blow and Purcell played for Smith, and the Queen's organist performed on Harris's instrument. These tests proving inconclusive, Harris challenged Smith to construct within a given time a number of additional stops, and in this way the vox humana, cremorne, and double bassoon stops were heard for the first time by the public. Smith completed the task, and the interest continued.

Finally the two Societies resolved to call in the Chancellor to adjudicate in the "battle of the organs," as it was called. The Middle Temple evidently had sufficient faith in his impartiality, for Jeffreys had formerly been a member of the Inner House, which supported Harris. On the other hand, it is doubtful whether he had any special knowledge of organ music. However, the Chancellor repaid the confidence reposed in him. After hearing the two organs he decided in favour of Father Smith's, and his instrument accordingly remained in the Temple Church.¹ Smith was paid £1000 for his organ, but on the Chancellor's recommendation the losing competitor was given a solatium of £100. Though the workmanship of Harris's organ seems to have been superior to Smith's, his instrument was considered less suitable to the Temple Church, being adjudged "discernibly low and weak." In this matter

¹ Signed statements of the "Price and Proposals" of the two competitors, "humbly Offered to the Right Hon^{ble} the Lord High Chancellor of England and the two Hon^{ble} Societies of the Temple," were among the Jeffreys Papers sold at Sotheby's in March 1929.

posterity has for once warmly endorsed the Chancellor's judgment, for Smith's organ has ably withstood the further test of time and still discourses fine music in the Temple Church.¹

In the same year the Inner Temple commissioned Sir Godfrey Kneller to paint the Chancellor's portrait at a cost of fifty pounds. The work was duly executed and "set up in the hall." The compliment to Jeffreys was unique, for it was the first occasion on which the Benchers of the Inn had commissioned an artist to paint the portrait of one of their number and paid for it out of the funds of the society.²

IV

Whatever measure of favour with the King he had regained by the end of the year 1687, the Chancellor suffered more than a proportionate decline in health. On Christmas Day, when so many courtiers attended Mass and so many of the Aldermen in the City either stayed at home or went to conventicles, Jeffreys determined to set an example and visit his parish church with the ceremony becoming his high office. With the Chancellor's purse and mace borne before him, Jeffreys attended morning service in the church of St Mary the Virgin, Aldermanbury, and was accompanied by his wife, servants, and other members of his household. There he received the sacrament at the hands of the rector, Dr Stratford, who was later to succeed the sycophantic Cartwright in the bishopric of Chester.

Jeffreys may have exposed himself unwisely to the weather on this occasion and caught a chill. At all events, he had the severest attack of the stone which he had yet suffered, and New Year 1688 opened for him almost at death's door. His recovery was slow, and the beginning of the Hilary term found him unable to take his seat on the bench in Westminster Hall. During his illness it appears that the Chancellor's purse and mace were stolen from his house in Duke Street by an Irish footpad and an accomplice. The emblems of office were

¹ J. B. Williamson, *The History of the Temple* (1924), pp. 546-551; *Dict. Nat. Biog.*, xxv, 21. The earliest mention of the award having been made is an entry in the Middle Temple Bench Minute Books dated December 6, 1687. See also *Notes and Queries*, 11th Series, iii, 427, 452, 476, and iv, 13.

² *Calendar of Inner Temple Records*, iv, 254. The portrait is reproduced as the frontispiece to the present volume. For the subsequent history of the original see below, p. 307 n. 1.

subsequently recovered in the accomplice's lodgings, but the culprits were never caught. Jeffreys very properly "turned out Mr Harris, his Purse Bearer."

The end of the first fortnight of the term found the Chancellor still poorly. Lord Clarendon called to see him one afternoon in February. "The answer was, he was asleep and not to be spoken with," noted Clarendon in his diary. "He had been in the Chancery in the morning for a little while; but he is much indisposed in his health."¹

Illness and the ties of business prevented him from going down at this time to Shropshire, of which county he had lately been appointed Lord-Lieutenant. The King had now made up his mind to call Parliament, but it was to be an assembly packed with Members favourable to his policy. For this purpose every Lord-Lieutenant was instructed to visit his county, and there ascertain from the Deputy Lieutenants, Justices of the Peace, and local Members how they would act if a General Election were to take place and a new Parliament be summoned. He was also to furnish the Government with a list of such Roman Catholics and Dissenters who were considered fit to serve as magistrates and Militia officers. Finally he was to examine the state of all boroughs in the county, and report to the Privy Council such details as might make them more amenable to royal influence. It was a distasteful task. Indeed, nearly half the Lords-Lieutenant of England refused to undertake it; they were promptly dismissed and replaced by others who were more compliant.² Most of those who did were compelled to report that the local gentry would return no Member to Parliament who would vote for removing the safeguards of the Protestant religion.

The unfavourable reception which he received when he sounded the Buckinghamshire gentry in December 1687 further served to dissuade Jeffreys from making the longer journey to Shrewsbury. He contented himself with writing a letter to the local Member, Mr Edward Kynaston, which he dispatched by hand.³

¹ *Clarendon Correspondence*, ii, 159.

² Macaulay, ii, 967 *et seq.* The complete list of Lords-Lieutenant dismissed by James II in 1687 is given in G.E.C., *Complete Peerage* (ii, 656).

³ *Transactions of the Shropshire Archaeological and Natural History Society* (1879), 1st Series, ii, 396.

*From my house
in Duke Street, Westminster
24th March, 1688*

SIR,

His Majesty having been pleased to do me the honour to make me his Lieutenant of the County of Salop, but his service requiring my attendance upon him here, whereby I am prevented from the happiness I proposed to myself of waiting upon you in person in the country, therefore I am commanded to give you the trouble of this by my servant, whom I have ordered to attend upon you for that purpose.

I doubt not, sir, but that you have perused and well considered his Majesty's late gracious Declaration for Liberty of Conscience, and thereby are fully convinced of his Majesty's real intentions to use his uttermost endeavours to have the same established into a law. For that purpose [he] does very suddenly design to call a Parliament to have the same effected, wherein he doubts not to have the concurrence of his Houses of Parliament in the carrying on of so good a work which is of public advantage to all his kingdoms; and in order thereunto has commanded me and the rest of his Lieutenants to propose to the Deputy Lieutenants and Justices of the Peace within our respective Lieutenancies the questions following, which I beg leave to propound to you, and desire your answer thereunto by this bearer, or as soon after as possibly you can:

(1) If you shall be chosen Knight of the Shire or Burgess of any town when the King shall think fit to call a Parliament, whether you will be for the taking off the Penal Laws and the Tests.

(2) Whether you will assist and contribute of [*sic*] the election of such Members as shall be for the taking off the Penal Laws and the Tests.

(3) Whether you will support the said Declaration for Liberty of Conscience by living friendly with those of all persuasions as subjects of the same Prince and good Christians ought to do.

Sir, his Majesty having so fully expressed his royal intentions in his said Declaration, it would be impertinent in me to give you the trouble of any dissent or comment upon the said questions. I cannot but humbly hope for a compliance in you to his Majesty's pleasure herein who is already sufficiently satisfied of your loyal affections towards him with your true zeal for his service.

I shall therefore give you no further trouble but to beg pardon for this and to assure you that I am with all sincerity, sir,

Your most faithful friend and humble servant

JEFFREYS, C.

In common with the majority of country gentlemen to whom the questions in this letter were put, Mr Kynaston replied that

he could not "in conscience comply with" the King's proposals. But, he added, with a touch of studied irony, "I shall always continue my allegiance to my King and live peaceably with my neighbours." Everywhere the answer was the same. The magistrates of England would gladly sacrifice life and property for the King, but the Protestant religion was dearer to them than both. "And, Sir," said Lord Bath, Lord-Lieutenant of Cornwall, to the King, "if your Majesty should dismiss all these gentlemen their successors would give exactly the same answer."¹

James now faced the rock of Anglican feeling, a rock of impenetrable hardness. Yet, to all outward purposes appearing undismayed, the obstinate monarch proceeded to run his head against it. On April 27, 1688, James issued a second Declaration of Indulgence, in which he said he was not to be moved from his resolution, and he had accordingly dismissed many of his disobedient servants from their civil and military employments. He further announced that he intended to hold a Parliament by November at the latest, and he exhorted his subjects to choose representatives who would assist him in the great work which he had undertaken. A few days later he ordered the Declaration to be read in all the churches in the country on two successive Sundays. The Bishops were ordered to distribute copies of the Declaration throughout their respective dioceses.

For the supporters of the Established Church this was the last straw. The Archbishop of Canterbury, William Sancroft, and six of his Suffragan Bishops, including Jeffreys' old friend Lloyd of St Asaph, refused to obey the order, and many of their clergy followed suit. In those churches where the officiating minister did read the obnoxious Declaration the congregations rose from their seats and walked out almost to a man. As for the Seven Bishops, they presented a petition to the King setting forth their opinion that "the Declaration, being founded upon such a dispensing power as may set aside all laws ecclesiastical, now appears to us illegal." In retaliation James determined to prosecute them for seditious libel.

The Bishops were first summoned before the King and Privy Council on June 8.² Jeffreys had previously advised James

¹ Macaulay, ii, 977. ² *Ibid.*, 1004; *Clarendon Correspondence*, ii, 481.

against his intended course, but his advice was disregarded, and the Chancellor had now to discharge the embarrassing duty of examining the prelates before the Board.

When the Bishops had been shown into the Council Chamber Jeffreys picked up their petition, which was lying on the table, and turned to Sancroft. "Is this the petition that was written and signed by your Grace and which these Bishops presented to his Majesty?"

The Archbishop looked at the paper, and then addressed the King. "Sir, I am called hither as a criminal, which I never was before in my life, and little thought I ever should be, especially before your Majesty; but, since it is my unhappiness to be so at this time, I hope your Majesty will not be offended that I am cautious of answering questions. No man is obliged to answer questions that may tend to the accusing of himself."

"This is mere chicanery," replied the King. "I hope that your Grace will not do so ill a thing as to deny your own hand."

Lloyd of St Asaph supported the Archbishop's view, and James grew angry. Sancroft repeated that he was not bound to incriminate himself. "Nevertheless," he added, "if your Majesty positively commands me to answer I will do so in confidence that a just and generous prince will not suffer what I say in obedience to his orders to be brought in evidence against me."

"You must not capitulate with your sovereign," Jeffreys warned the Archbishop.

"No," said the King, "I will not give any such command. If you choose to deny your own hands I have nothing more to say to you."

The Bishops withdrew to the antechamber. A quarter of an hour later they were summoned back. "His Majesty," said Jeffreys to them, "has commanded me to require you to answer this question—whether these be your hands that are set to this petition."

"I command you to answer the question," added the King.

The Archbishop took the petition, and after looking at it said, "I own that I wrote this petition and that this is my hand."

The Chancellor then put the question to the others one by one, and they all answered in the affirmative. A second time

they were sent away, and a second time they returned to the Council Chamber.

"It is his Majesty's pleasure," the Chancellor told them "to have you proceeded against for this petition, but it shall be with all fairness in Westminster Hall. There will be an information against you, which you are to answer; and in order to that, you are to enter into a recognizance."

The Bishops evidently expected this move, for they immediately put forward various objections to their giving bail. Lloyd conceived it "may be very prejudicial to us," and hoped the King would not be offended if they refused. Others said there was no precedent for any members of the Upper House being bound in recognizance for a misdemeanour. Jeffreys replied that there were precedents, but on being pressed to name one could not remember any. The Bishops remained adamant, and after further comings and goings the Council reluctantly signed a warrant for their arrest and committal to the Tower. They were conveyed from Whitehall to the fortress by river, and as they went received a sympathetic ovation of remarkable volume from the crowd who lined the banks of the Thames. Admirers waded out into the water, and even the sentries at the Traitors' Gate reverently begged their blessing.

Although he was among the Privy Councillors who signed the warrant for the Bishops' arrest, Jeffreys was far from easy in his mind as to the wisdom of making popular martyrs of them in this manner. Shortly after their arrival in the Tower Lord Clarendon called at Duke Street to see the Chancellor, who "discoursed very freely to me concerning the Bishops." Jeffreys told Clarendon that he "was much troubled at their prosecution, and made many professions of service for them which he desired me to let them know." The Chancellor went on to say that he thought the King had intended to drop the business, and it grieved him to know that James had changed his mind. He did not know exactly how this had happened, but there was no help for it now. He hinted that Father Petre and the extreme Catholics at the council table were to blame. "Some men," added Jeffreys significantly, "would hurry the King to his destruction."¹

¹ *Clarendon Correspondence*, ii, 177.

V

Two days after the arrest of the Seven Bishops a messenger called at the Chancellor's house with a piece of news which sent Jeffreys hurrying to St James's Palace. The Queen, Mary of Modena, was in labour, and the birth of an heir to the throne was expected at any moment. A few hours later it was announced that the Queen was safely delivered of a son. Bonfires were ordered to be lighted, and church bells rung. But the mass of the Protestants in the country regarded the birth as supposititious, and refused to credit the report any more than they had the announcement of the Queen's pregnancy at the beginning of the year, when Clarendon had remarked that it was "strange to see how the Queen's great belly is everywhere ridiculed, as if scarce anybody believed it to be true."¹

Of the event there can be no doubt. Jeffreys, who stood by the Queen's bedside throughout, subsequently swore that he "heard her cry out several times as women in travail use to do, and at length after a long pain it was by some of the women on the other side of the bed said the child was born." This account is supported by James's daughter, Princess Anne of Denmark, who, though not present herself, went to considerable trouble to obtain every detail she could from those who were, so as to transmit an account to her sister Mary in Holland. "The feet curtains of the bed were drawn, and the two sides were open," wrote Anne.

When she was in great pain the King called in haste for my Lord Chancellor, who came up to the bedside to show he was there; upon which the rest of the Privy Counsellors did the same thing. Then the Queen desired the King to hide her face with his head and periwig, which he did, for she said she could not be brought to bed and have so many men look at her; for all the Council stood close at the bed's feet, and my Lord Chancellor upon the step.²

Sunderland whispered to the Queen that it was a son, and Jeffreys followed the midwife who carried the child into the adjoining room, where it was displayed to an admiring throng. "It was black and reeking," he added, somewhat coarsely,

¹ *Clarendon Correspondence*, ii, 156.

² Sir John Dalrymple, *Memoirs of Great Britain and Ireland* (1773), ii, Book V, p. 183.

"so that it plainly seemed to have been newly come from the womb."

It was suggested to the King by Sunderland, with the support of Jeffreys, that the auspicious birth of a Prince of Wales had given his Majesty an excellent opportunity for the exercise of his royal clemency in the release of the Seven Bishops. But James was not to be moved. "I will go on," he told the Papal Nuncio; "I have been only too indulgent. Indulgence ruined my father." The Chancellor again confided his uneasiness of mind to Clarendon, to whom "he talked very freely . . . and with great trouble on the Bishops' affair." His own conduct in the matter he sought to defend, saying "it could be found that he had done the part of an honest man." His parting shot was at his judicial colleagues who were to try the Bishops. "As for the judges," he said, "they are most of them rogues."¹

On June 29, 1688, William Sancroft, Archbishop of Canterbury, was brought to trial in Westminster Hall, together with his six Suffragans—Lloyd of St Asaph, Turner of Ely, Lake of Chichester, Ken of Bath and Wells, White of Peterborough, and Trelawney of Bristol.² Chief Justice Wright presided, and was assisted on the bench by the three singularly inept puisne judges, Holloway, Allibone, and Powell. The Attorney-General, Sir Thomas Powis, a third-rate lawyer, led for the Crown, but the case for the prosecution was really managed by Jeffreys' old enemy William Williams, who had deserted from the ranks of the Whigs to become Solicitor-General and receive a knighthood, a particularly flagrant example of political apostasy. The Bishops, on the other hand, were defended by the most brilliant lawyers at the Bar, most of whom had previously forfeited office by reason of their independence. They included two ex-judges, Pemberton and Levinz, two ex-Law Officers, Sawyer and Finch, and an ex-Recorder of London, Treby. In addition there were Pollexfen and a young junior whom Pollexfen insisted on being briefed, John Somers, who was destined to follow Jeffreys on the Woolsack. Jeffreys, of course, took no part in the trial, but he may have been among the thirty-five peers who are stated to have been present as onlookers.

It is not proposed to describe the details of this celebrated

¹ *Clarendon Correspondence*, ii, 179.

² Howell, *State Trials*, xii, 183.

trial. Suffice it is to say that Mr Solicitor Williams had the utmost difficulty in proving publication of the petition, and it was only the last-moment appearance of Lord Sunderland, interrupting Chief Justice Wright's summing up, which made this possible. "Popish dog!" the spectators cried out to Sunderland, who had publicly embraced the Roman creed a short time before, while Williams was loudly hissed. In the evening the jury retired, and they were kept under lock and key till next morning, when they brought in a verdict of not guilty. Cheering immediately broke out in court and spread through Westminster Hall to the waiting crowds outside. Jeffreys, who heard the shouts from his seat in the Court of Chancery, was seen to smile and hide his face in a nosegay of flowers which he kept beside him on the bench. Whatever it might ultimately mean for himself, he knew that the result would be a setback for Williams, who lately had had his eyes on the Great Seal. Meanwhile the news of the Bishops' acquittal spread like wildfire, and, to quote Luttrell, "at night was mighty rejoicing in ringing of bells, discharging of guns, lighting of candles and bonfires in several places, though forbid, and watchmen went about to take an account of such as made them: a joyful deliverance to the Church of England."¹

James was with his soldiers at Hounslow Camp when the news was brought to him. "So much the worse for them," he commented surlily, and hastened back to town. As he left the soldiers began to cheer, and he asked what the uproar meant. "Nothing," was the reply. "The soldiers are glad that the Bishops are acquitted." Well might he ask, "Do you call that nothing?" The ill-judged prosecution of the Seven Bishops was the unwisest act of his reign, and it hurried on the catastrophe which was to engulf him and his Chancellor. In the words of that clever politician Halifax, "it hath brought all Protestants together and bound them up into a knot that cannot easily be untied." Jeffreys did not feel at all happy about the business. He had already foreseen, as he put it in one of his conversations with Clarendon, that the Bishops' "being brought to a public trial would be of very ill consequence to the King in all his affairs."²

• ¹ i, 488.

² Macaulay, ii, 1031; *Clarendon Correspondence*, ii, 179.

VI

"I should be glad," wrote Sir Thomas Jeffreys to his brother James about this time,

that you would let me know how affairs go with my lord, for I heard various reports of him, some that he stands as fast as ever, others that he is much declined at Court, and is abundantly uneasy and out of humour. Pray, brother, tell me the whole, and what else you know of his domestic affairs.¹

As we have seen, the Chancellor had, owing to the differences between Sunderland and Petre, recovered a measure of his former influence at Court, but his ability to sway the King's judgment in the face of the Jesuit cabal was relatively slight. A few days after the trial of the Seven Bishops he met Clarendon and expressed the hope that James "might be persuaded to take moderate councils." "Now," said Jeffreys, "honest men, both Lords and others (though the King has used them hardly), should appear often at Court; I am sure it would do good."² It was a vain hope, for the King did not think of making concessions until it was too late. Instead he removed two of the judges, Holloway and Powell, who had favoured the Bishops during their trial, and ordered returns to be made to the Ecclesiastical Commission of all clergy who refused to read the Declaration of Indulgence in their churches.³ As for the "honest men" in the country who no longer came to Court, many of them were in communication with the King's son-in-law, William of Orange, and giving him promises of support should he come to England and rescue them from the tyranny of James. Jeffreys was not numbered among them. He knew that, whatever the King's failings and to whatever lengths he might go, he must stand or fall by him.

One incident which occurred soon after the Bishops' acquittal showed that Jeffreys was generally identified in the public mind with the King's policy, particularly by the High Tories. The Duke of Ormonde, who held the distinguished office of Chancellor of Oxford University, died in July. The King immediately sent down a mandate to the Vice-Chancellor recommending Jeffreys as Ormonde's successor. The university

¹ Jeffreys MSS. (letter of 5 July, 1688); *Home Counties Magazine*, xii (1910), 88.

² *Clarendon Correspondence*, ii, 180.

³ Luttrell, i, 499-500.

authorities seem to have had advance notice of the King's intentions, for Convocation met with unusual haste, and by the time the royal mandate arrived had voted the late Duke's son into the vacant chair. The Vice-Chancellor was profuse in his apologies to Jeffreys, "of whose goodwill and favour to us," he observed, with perhaps a hint of irony, "we have had so much experience." The university, Mr Vice-Chancellor went on, had no idea that his lordship had "any inclinations that way, or that you would accept of that office." His lordship would, of course, understand that the university statutes required Convocation to proceed to the election of a new head at the first convenient moment, and "my late Duke of Ormonde's obligations to this place were so many and so great, and our presumptions that his son would stand up in his father's room were so reasonable, that the consideration of it made a speedy way for the election of his lordship."¹ It could not be helped, but, all the same, Jeffreys' pride was wounded.

Nor was his private life devoid of worries. It was a great disappointment to him that his wife had been unable to bear him an heir, and Ann herself seems to have felt it keenly. It meant that his titles would be inherited by the only son of his first marriage, John, or "Jacky," as he was known in the family. Jacky was now a lad of fifteen, and had already shown signs of profligacy and extravagance which his father hoped that a prudent wife would cure. On July 17, 1688, he was, in fact, married to Lady Charlotte Herbert, the only daughter and heiress of the dipsomaniac and homicidal Earl of Pembroke and niece of Jeffreys' old patron, the Duchess of Portsmouth. It was a good match, for the lady was tolerably well off, and her material prospects had been increased by a decision recently given in her favour by the Court of Chancery. The ceremony took place in the chapel at Bulstrode. The Rector of Hedgerley officiated, probably assisted by Jeffreys' chaplains. Some days later, since the bride was a Catholic, they went through the Roman rite in London before the Catholic Bishop Ellis. "On Tuesday, the 17th, at Bulstrode," wrote John Verney,

the Lord Chancellor's son (aged fifteen, very low of stature, but a fine scholar) was married to the daughter of the last Earl of

¹ *Clarendon Correspondence*, ii, 490.

Pembroke by [the Duchess of] Portsmouth's sister, and some say they were again married after the Romish manner the latter end of the week. Very lately there was a decree passed in the young lady's favour; she is thirteen years of age and taller than her husband. The King was pleased to wear a wedding favour of the Lord Chancellor's son's, and all the Privy Counsellors had also favours given them.¹

Clarendon, who had some complicated Chancery business on his hands, saw a good deal of Jeffreys during this summer. The Chancellor tried to turn the meetings to profit by using the High Tory peer as a medium through whom he might correspond and make his peace with the Archbishop of Canterbury. Early in August Clarendon called at Duke Street, but found the Chancellor had gone off to Dover with Lady Pembroke, who was returning to France after her daughter's wedding.² A few days later Clarendon went to dine at Bulstrode, and met there Dr Charles Hickman, a parson who was chaplain to his brother Rochester and was also Rector of Burnham.³ "When I was going away," Clarendon noted afterwards in his diary,

my Lord Chancellor would needs carry me as far as Dr Hickman's living: I went in his calash with him. He talked very freely to me of all affairs, called the judges a thousand fools and knaves; that Chief Justice Wright was a beast. He said the King and Queen were to dine with him on Thursday next; that he had still great hopes the King would be moderate when the Parliament met. When we came to Dr Hickman's my lord was inclined to be merry, saying he had Papists and spies among his own servants and therefore must be cautious at home. I stayed about an hour and then left them.⁴

The King and Queen kept their engagement, and dined with the Chancellor at Bulstrode on August 22.⁵ No doubt the

¹ *Verney Memoirs* (1892-99), iv, 434. The information in the local parish register has been communicated by the courtesy of the Rev. D. J. Jones, Rector of Hedgerley.

² The Dowager Countess of Pembroke (*née* Henriette de Kéroualle) was a sister of Louise, Duchess of Portsmouth. Her English was not very proficient, as shortly after her arrival in France she wrote to her brother-in-law, the eighth Earl of Pembroke: "The last letter I received from my dafter put me worth of a gred troble for it was rappedorted hed her Ingland wois in a gred troble but bay her Letter I doe faind it is a fals report" (Sotheby's catalogue of sale February 17, 1936, p. 34).

³ Hickman was appointed Bishop of Derry in 1703, and died in 1713. Several of his sermons have been published (*Dict. Nat. Biog.*, xxvi, 357).

⁴ *Clarendon Correspondence*, ii, 185.

⁵ Luttrell, i, 456.

question of making concessions to the Church was discussed, for Sprat, the Bishop of Rochester, had just resigned his seat on the Ecclesiastical Commission, saying "he could not sit as judge on such pious and excellent men." Whatever passed between James and his Chancellor that summer evening, the King delayed making any move in the direction of conciliation until another month had passed. Meanwhile news of naval preparations by the Dutch began to reach England. On September 18 Evelyn went to London and "found the Court in the utmost consternation on report of the Prince of Orange's landing, which put Whitehall into such a panic of fear that I could hardly believe it possible to find such a change."¹ The report proved to be false, but it seemed nevertheless that the foreign invaders might appear at any time. It was not until the end of the third week in September that Jeffreys prevailed upon the King to issue a proclamation through the Privy Council that he had no sinister designs on the Church of England, and that at the General Election, which had been announced for November, no Catholics should be returned to the House of Commons. At a levee the next day Jeffreys told Clarendon that he had drafted this proclamation, and, further, that the King intended to send for Clarendon, his brother Rochester, the Archbishop of Canterbury, "and some others of his old friends" to discuss with them "the whole state of his affairs." A day or two later Jeffreys saw Clarendon again and told him that the King was going to summon a meeting of the peers who were in and about town for the same purpose, and that "he would set all things upon the foot they were at his coming to the Crown." As a beginning several of the City aldermen who had been turned out were to be reinstated and the old Charter restored to the Corporation.

Unfortunately, these hopes were destined to be only realized in part, for even at this critical stage in his fortunes James allowed himself to be swayed by Father Petre and the rest of the Ultramontane clique. Less than a week after the first proclamation he issued another announcing that Parliament would not meet in November and the writs already issued were to be recalled. The King also remained adamant on the question of the dispensing power. Jeffreys was considerably

¹ iii, 239.

depressed by this news. "All was nought," he told Clarendon; "some rogues had changed the King's mind," and James would evidently "yield in nothing to the Bishops." In short, "the Virgin Mary was to do all."¹

Although James declined to treat with the heads of the Established Church over the dispensing power and postponed the calling of Parliament, the prospect of a Dutch invasion, so soon to become a reality, did at last rouse the obstinate monarch to a sense of danger. For the decision to reinstate the aldermen and restore the City Charter Jeffreys claimed the credit. Clarendon, who met the Chancellor on October 2, thought he seemed wonderfully pleased at the King's condescension. Jeffreys "valued himself much upon having brought him to it," remarked Clarendon, "and said he doubted not but to bring him to do more good things." Jeffreys was ordered to prepare the grant and pass it under the Great Seal. Two days later Jeffreys drove to the City in the Chancellor's coach, resplendent in his gold-frogged robes of office and bearing the purse and mace. At Temple Bar he was met by the Sheriffs, who conducted him amid cheering crowds to the Guildhall. There he handed over the instrument confirming the City in its ancient liberties "with the appearance of joy and heartiness." But, says the Whig historian Oldmixon, "everybody saw through this affectation, for he had raised himself chiefly by advising or promoting the surrender." On his way back to Westminster the appearance of his coach caused an outbreak of hooting, so that he realized that the cheers on his outward journey had been intended for the City Charter and not for the person of the Lord Chancellor.²

Other concessions to popular feeling quickly followed. Many more municipal charters were restored, the Court of Ecclesiastical Commission was dissolved, the ejected President and Fellows of Magdalen were allowed to return to their college, the suspension of the Bishop of London was removed, a general pardon was issued, and Father Petre was instructed not to attend any further meetings of the Privy Council. James further notified his intention of replacing all magistrates and Deputy Lieutenants who had been dismissed for refusing to

¹ *Clarendon Correspondence*, ii, 188, 191.

² *Ibid.*, 198; Oldmixon, *History of England*, p. 750.

support his policy. "Oh, rare invasion," exclaimed Luttrell, in an access of gratitude to the Dutch, "to occasion so many gracious acts in restoring things to their old legal foundation which hath been the work of some years past to unhinge."¹

Unfortunately, none of these royal acts could stop the Dutch fleet, which the King learned by the middle of October was waiting with troops embarked to sail with the first wind. James was already resigned to his fate.

"You will all find the Prince of Orange worse than Cromwell," he said to his counsellors. Neither had his Chancellor any illusions on the subject of William's intentions. A courtier meeting Jeffreys about this time asked him what were the heads of the Declaration which the Dutch Prince had recently issued to the English people. Jeffreys replied that he did not know. "But," he added jocularly, "I am sure mine is one, whatever the rest are."²

¹ i, 468.

² *Clarendon Correspondence*, ii, 194; Irving, p. 353.

CHAPTER X

THE TOWER

JEFFREYS publicly announced the King's belated concessions at a select gathering of professional brethren and members of the Bar who dined at his house on October 14, 1688. The occasion was the King's birthday. Among those invited "to eat a piece of mutton" was Mr Edward Ward, a Whig barrister whom the Chancellor had on more than one occasion rated soundly from the bench.¹ The candid letter conveying this invitation exhibits an attempt on the part of the Chancellor to ingratiate himself with the political opponents of his profession. Of course, it came too late to have any effect. "My desire," wrote Jeffreys to this guest,

does proceed from a mind *servare jus illæsum*. When you hear what I shall propose I am morally assured you won't think me fool enough as to be thought so cunning as to endeavour to ensnare you, . . . and if thereupon you shall think me otherwise than what I hereby intimate, you may for ever publish that I cannot be, sir, a friend to justice, honesty, or to you.²

Ten days later the Michaelmas term opened as usual in Westminster Hall. There was one new judge to be sworn in—Serjeant Stringer, whose son had married the Chancellor's daughter Margaret; he was elevated to the King's Bench. Jeffreys may well have had a heavy heart when he administered the customary oaths to him, for it was the last judicial appointment of the reign at which he was to assist.³ No doubt he had a foreboding of imminent danger, for two days later he summoned Sir Robert Clayton, Henry Pollexfen, and two other friends, a barrister, Edward Jennings, and a merchant, Thomas Coulson, and with their co-operation executed a settlement of all his landed property outside London on his wife and son.⁴

¹ Particularly in *Pritchard v. Papillon* (Howell, *State Trials*, x, 319), where Ward's bearing under the ordeal was a model of self-control. After the Revolution Ward was knighted and raised to the bench (*Dict. Nat. Biog.*, lix, 311).

² The original of this letter was sold at Sotheby's on April 23, 1934: communicated by courtesy of Mr G. D. Hobson.

³ Luttrell, i, 470; Foss, vii, 277.

⁴ The barony and manors of Wem and Loppington, in Shropshire, the manors of Dolby and Broughton, in Leicestershire, and the manors of Bulstrode and

A day or two later the powerful Earl of Sunderland was dismissed from his office of Lord President of the Council. The immediate cause of his fate was the discovery that the original draft of a projected treaty between James and Louis XIV of France was missing from his custody. For months he had been secretly intriguing, through the medium of his wife and Henry Sidney, her lover at The Hague, with the Prince of Orange, and, in spite of his acceptance of the Catholic faith, Sunderland's loyalty had been suspect for some time by James and Father Petre. "I hope," said the King, as he gave him his quietus, "you will be more faithful to your next master than you have been to me."¹ Sunderland laid down the seals with such profuse expressions of devotion to the royal cause that the King was momentarily persuaded to believe him. But James was soon disabused of this idea, for the treacherous Minister, after a short sojourn in the country to screen his real intentions, stole off in disguise to Holland. So far as is known, Sunderland gave Jeffreys no hint of his plans: possibly he knew that the Chancellor could be trusted to stay by James until the last. As for Jeffreys, he can hardly have viewed Sunderland's defection with much satisfaction. One by one his props at Court and in the country had been withdrawn, and he was now left alone in his allegiance to the King, except for the Catholic junto, which refused to take him into their confidence.

William of Orange was by this time on his way to England, and, although his fleet was at first driven back by storms—"Popish weather," as the London mob called it—the Prince eventually succeeded in reaching the Devon coast and landing at Torbay on November 5. In the manifesto which he had published and which he had taken care should precede his arrival William stated that he came at the invitation of a number of lords spiritual and temporal. James immediately summoned as many peers as he could to his presence and put their loyalty to the test. The Bishop of London, who was among them, had actually signed the invitation, but a cleverly phrased

Fulmer, in Buckinghamshire. See Garbet, *History of Wem*; J. Nichols, *History of Leicestershire* (1795-1815), ii, 114, and *Victoria County History of Buckinghamshire*. The original deed of settlement, "damaged by fire and water," was sold at Sotheby's on March 25, 1929.

¹ Sir John Bramston, *Autobiography* (1845), p. 327.

equivocal answer secured his release. Halifax, Clarendon, and Nottingham stoutly denied complicity. Jeffreys, however, was not interrogated, for the King rightly felt he could rely on his loyalty.

As soon as the news of William's landing reached Whitehall James prepared to join his army at Salisbury and meet the invader, for, whatever his faults, cowardice was not one of them. Just before his departure a number of peers, headed by the Archbishop of Canterbury, presented a petition to the King praying that a free and legal Parliament might be called and that negotiations might be opened with the Prince of Orange. The petition originated with Lord Rochester, and it was at first hoped to obtain many signatures to it, including the Chancellor's. Halifax without hesitation refused to sign it if Jeffreys did. "I will not join with any who have sat in the Ecclesiastical Commission," he told Clarendon. "Those proceedings must be questioned, and therefore it is not fit that any in that Commission should sign this petition." Rochester, of course, had been a member of the Commission, and, as he persisted in signing, Halifax and a number of other influential peers stood out. Regarding Jeffreys Clarendon said that "I should not concern myself whether he did or no, but that his signing it should not make me decline it." Jeffreys, however, either was not asked or else purposely avoided appending his signature to a document which gave the King considerable displeasure. Anyhow, he did not sign it. As for those who did, James gave them a chilly reception and a curt answer. "He would call a Parliament as soon 'as it was convenient, but it could not be whilst the invasion and rebellion lasted."¹

The same day, November 17, Jeffreys was one of a small and solemn gathering which attended the King in Whitehall for the purpose of witnessing his Majesty's will. The fact that the original draft of this testament exists with marginal annotations in Jeffreys' handwriting suggests that the Chancellor had a hand in its composition. "Seriously considering the great uncertainty [*sic*] of human life and that we as all other men are subject to mortality," the King was, as he put it, "therefore

¹ *Clarendon Correspondence*, ii, 203, 205; Oldmixon, *History of England*, p. 757. The petition was signed by nineteen peers, including the two Archbishops, the Bishops of St Asaph, Rochester, Peterborough, and Oxford, and Lords Clarendon and Rochester.

desirous to compose and settle the affairs of our State against the time when it shall please Almighty God to call us from this transitory life." James left everything to the Queen and "our most dear son, Prince James," and requested that the Chancellor and his other Ministers be continued in their offices in the event of his death. Jeffreys as Chancellor was the first witness; then followed the five Lords of the Council, Arundell of Wardour, Melfort, Belasyse, Godolphin, and Preston; and immediately below their names came that of the King's faithful servant and the Chancellor's old friend, Samuel Pepys, Secretary of the Navy. The two remaining signatories were William Bridgeman, Clerk of the Council, and William Blathwayt, Secretary-at-War.¹ For two at least of those present, Jeffreys and Pepys, who, if in a sense self-made, owed much to King James, the occasion was, for all its importance and solemnity, a very sad one.

That afternoon the King set off for Salisbury, leaving the supreme government of the country vested in a Committee of five Privy Councillors, headed by Jeffreys. At Sarum bad news awaited the unfortunate monarch. The western counties had risen in arms, Lord Delamere was heading an insurrection in the North, and many prominent individuals had gone over to William, including Clarendon's son, Cornbury. Two more military commanders, Churchill and Kirke, likewise deserted, and they were followed by the King's other son-in-law, Prince George of Denmark. The royalist troops, beaten in several skirmishes by the advancing rebels, began to retreat from

¹ J. S. Clarke, *James II* (1816), ii, 643. The original of the will is among the Stuart MSS. in Windsor Castle. The draft with the marginal notes in Jeffreys' handwriting is preserved in the Rawlinson MSS. (B.217, f. 8), in the Bodleian Library, Oxford. Concealed beneath a blank sheet of paper which has been pasted over it in the next folio, but clearly legible, is written the following: "May 13, 1728. This draught of King James II's will, with the marginal notes under the handwriting of the 1st chancellor Jeffreys, was given to me by Mr Lockyer, clerk of the Leathersellers' Hall, into whose father's hands that chancellor's papers came. Witness my hand, RIC. RAWLINSON." The "Mr Lockyer" was John Lockyer (1693-1760), a miscellaneous writer and book-collector, described by Dr Johnson as "a gentleman eminent for curiosity and literature" (*Dict. Nat. Biog.*, xxxiv, 41). His father, Stephen Locker, probably acquired the draft mentioned from Jeffreys' trustee, Sir Robert Clayton, with whom the elder Locker must have had professional dealings, since they were both scriveners. As for the other papers, their whereabouts are a mystery. There is no trace of them among the extensive Locker MSS. in the British Museum, while John Locker's descendant, Commander Oliver Locker-Lampson, has informed me that he doubts whether they were ever in the family collection.

Salisbury, and James hurried back to London, to find that his daughter Princess Anne of Denmark and Lady Churchill had fled to join their husbands in the rebel camp. "God help me!" the unhappy man exclaimed, "my own children have forsaken me."

II

During the ten days in which James was absent from town Jeffreys, together with the other members of the Committee of the Privy Council, conducted State business on the King's behalf, although the Chancellor must have been growing more and more unpleasantly aware of his own embarrassing position: the sight of the two Catholic members, Belasyse and Arundell of Wardour, who by law and rights ought not to have been in the Council Chamber at all, did not contribute to make him feel any more at ease. However, he carried on doggedly, and he was actually engaged in sealing up the papers of the Churchills when the news arrived in Whitehall of the Princess Anne's flight—conveyed somewhat dramatically by her old nurse, who burst in to the royal apartments crying out that the dear lady had been murdered by the Papists. This and similar incidents seem to have alarmed Jeffreys, for he was reported about the same time to be "privately packing up his things and removing some of them."¹ As a further precaution he sent his wife and children down to Leatherhead, to the house of Lady Jeffreys' brother, Sir Thomas Bludworth.

In spite of these alarms, Jeffreys continued to attend the Court of Chancery as usual. On November 23 he heard a case of some importance, and gave judgment with apparent unconcern that it might be his last. The case, *Comer v. Hollingshead*, called in question the responsibility of the Chancery Masters and other officials for suitors' money invested by them in securities which turned out badly.² Jeffreys held that the Master in this case was not liable, since bribery and corruption had not been shown. "The Masters would have uneasy place of it if they were to answer for defective securities," he said, "nor is that so much their business; but it concerns each side

¹ Macaulay, iii, 1166; Luttrell, i, 479.

² Vernon, ii, 90.

to have counsel to peruse the title." Thus in his last recorded judgment Jeffreys put his finger on one of the most fertile grounds of complaint against the practice of his court.¹

As soon as he reached town the King summoned all the Lords of the Council who were in London to attend him in Whitehall on the following day—Tuesday, the 27th. About forty obeyed the summons, all Protestants, and the Chancellor among them. James began by telling them that he had been considering the petition which he received on the eve of his departure for Salisbury, and that during his journey he had sensed the feeling of the country in favour of a Parliament. He now begged their advice as to "what was best to be done in the present exigency." Jeffreys, as well as Rochester, Clarendon, Godolphin, and many others, spoke out in favour of the speedy summoning of Parliament. Clarendon in particular spoke with the utmost freedom, laying the blame of "most of the late miscarriages" on the King's policy of admitting Catholics to the Army and other posts. His statement that at that very moment a regiment was being raised "to which none were to be admitted but Papists" called forth an emphatic "No, no" from James. Clarendon proposed that, in addition to the summoning of Parliament, Commissioners should be sent to treat with William of Orange. The meeting broke up after a long discussion. "My lords," said the King, "I have heard you all. You have spoken with great freedom, and I do not take it ill of any of you. I may tell you I will call a Parliament, but, for the other things you have proposed, they are of great importance, and you will not wonder that I take one night's time to consider of them."

Next morning there was a meeting of the Privy Council, at which the King ordered a warrant to be made out to the Chancellor directing him that he "do forthwith cause writs to be issued out in due form of law for the calling of a Parliament" to meet on January 15, 1689.² Later in the day Jeffreys announced the royal intentions in Westminster Hall. "This gives infinite satisfaction," noted Clarendon, who was present. A little later James sent for Lords Halifax, Nottingham,

¹ The practice was altered in 1726, when an Act of Parliament (12 Geo. I, c. 32) made compulsory the investment of such moneys in 'gilt-edged' stock.

² The original warrant signed by W. Balthwayt, Secretary-at-War, and addressed to Jeffreys, was sold at Sotheby's on February 17, 1936.

and Godolphin, and told them that they should act as Commissioners to negotiate with the Prince of Orange. These concessions on the part of the King were, however, only feints to veil his ultimate plans, which he had not divulged even to Jeffreys. James had now made up his mind to send the Queen and the infant Prince of Wales out of the country and to follow them himself as soon as he could conveniently escape.

The same day Jeffreys was commanded by the King to take up his residence in Whitehall. He accordingly moved into "the Duke [of York]'s little old bedchamber" in Whitehall Palace, which had been vacated by Father Petre. The King's hated Jesuit adviser had recently been seen packing up "several chests"; the latest bulletin was that he was "now quite gone and retired beyond sea." Other evil counsellors were reported to have "also retired privately." The reason why Jeffreys was obliged to quit his costly mansion in Duke Street for a small apartment in Whitehall was that the King wished to have the Great Seal near him, "that pestiferous lump of metal" to which English jurists have always attached a peculiar and almost mysterious importance. Every patent passed under the Seal, even without royal sanction, could only be annulled by Act of Parliament. Therefore, to prevent his enemies getting this vital instrument into their hands and using it to his injury, James determined to have it and its Keeper within call.

Before leaving Duke Street Jeffreys sent for all the tradesmen to whom he owed any money and settled his debts. While he was engaged with them in the parlour Moses Pitt, his landlord and the speculative builder who had built the house, was shown in. Mr Pitt came for his rent, and also to redeem the promise that Jeffreys had given him about the land on which his cause room had been erected as an addition to the main structure. It will be remembered that when Jeffreys took the house he had instructed Pitt to build the additional chamber which he required and had told him that he would obtain for him a grant of the land from the King. Unfortunately, the King had already bestowed the freehold on his favourite, Sir Edward Hales. The Chancellor thus found himself in the position of having promised more than he could perform, and he could do nothing about it. "He told me," said Pitt, "that he would leave the house, and that he should not carry away the ground

and building with him, which was all the answer I could have from him."¹

On Thursday morning, the 29th, Lord Clarendon called upon the Chancellor in his new quarters in the palace. Jeffreys told his visitor that the King was "very angry" with him for what he had said on Tuesday night at the meeting of the Lords of the Council, but "now the writs were out for the calling a Parliament," and he hoped his Majesty "would be reconciled to his old friends." But Clarendon was past reconciliation. He said nothing of his intended movements to Jeffreys when he took his leave, but went home, packed up a few belongings, and less than forty-eight hours later was on the road to Salisbury to join the Prince of Orange.²

About this time, probably on the same day as the interview with Clarendon, Jeffreys received news that his two-year-old daughter Ann, who had been sent with her mother for safety to Sir Thomas Bludworth's house in Leatherhead, was dangerously ill. The Chancellor hastened to the bedside, and on his arrival discovered that the infant was dying. There is a Surrey legend that Jeffreys arrived secretly at dead of night; he seems to have been with his daughter during her last moments, for there is an entry in the registers of the parish church of Leatherhead to the effect that she was buried two days later.³ The Chancellor must have known by this time that his own life was in peril, but after discharging this sad act of devotion he had no hesitation in returning to his post in Whitehall. So long as James was King he might expect allegiance and loyal service from his Chancellor.

Throughout the following week Jeffreys remained in attendance upon his Majesty. For the Chancellor it cannot have been a particularly pleasant duty, for every day news poured in to the palace of fresh risings in different parts of the country and increasing desertions to the Dutch colours. While the Commissioners whom he had appointed were arguing with his son-in-law at Hungerford James was using the time to perfect plans for escape. On Saturday, December 8, Jeffreys

¹ *The Cry of the Oppressed*, p. 108.

² *Clarendon Correspondence*, ii, 211-212.

³ "2^d December 1688 the daughter of my Lord Chancellor Jefferyes burried" (communicated by Miss M. Melville Balfour). See also E. Parker, *Highways and Byways in Surrey* (1909), p. 285.

sat for a short time in the Court of Chancery, and later that day the King sent for him, telling the Chancellor to bring the Great Seal with him and also the writs for the new Parliament. They met in Chiffinch's room in the palace, and in the chamber which witnessed the foundations of Jeffreys' fortunes at Court the Chancellor severed his official connexion with the Stuarts. By this time, it may be added, the Chancellor had become alive to the necessity for making some provision on his own behalf, for the same day he executed a mortgage on his Leicestershire property to his friend Jeffrey Jeffreys, from whom he received the sum of £1000 in cash. The obliging merchant also advanced a further sum of over £8000 for the benefit of the Chancellor's numerous creditors.¹

The next day the King sent his wife and son down the river to Gravesend, where a yacht was waiting to take them to France. On Monday, December 10, he completed his own plans. A dispatch received that morning from the three Commissioners at Hungerford contained remarkably liberal proposals from William. But for James there was no turning back. He had made up his mind to fly. And yet he kept Jeffreys in the dark as to his intentions. That night as he was about to retire he bade the Lord Chancellor attend him in his closet on the morrow.

James then proceeded in the privacy of his bedroom to burn the unissued writs for summoning Parliament. He also wrote a letter to Lord Feversham telling him to disband the Army without pay. Some hours later—to be precise, about two o'clock on the morning of Tuesday, the 11th—he slipped out of the palace by a secret passage. Outside the building he was met by Sir Edward Hales, who had a hackney-coach waiting, and together they drove to Millbank. There they crossed the Thames in a wherry, and as they passed Lambeth James threw the Great Seal into the water. It sank into the mud and lay there for some months before it was accidentally dragged up by a fisherman with his net.²

The King had no compunction in discarding the Chancellor and leaving him to shift for himself as best he could. "I am sensible," wrote James a day or two later, when he reached

¹ J. Nichols, *History of Leicestershire* (1795-1815), ii, 114, 119.

² Macaulay, iii, 1198.

the coast, "that my Lord Chancellor hath been a very ill man and hath done very ill things." ¹

III

Jeffreys' feelings on entering the royal apartments on Tuesday morning and finding that James had flown can be imagined. The palace was in a state of utmost confusion. His Majesty had gone, and pending the arrival of the Prince of Orange, who it was assumed would be his successor, nobody at first knew what to do. Before any decision could be taken Jeffreys forestalled his own possible arrest by hurriedly leaving the palace. Indeed, he left so early that many people thought he had escaped with the King and Sir Edward Hales. Meanwhile the Lords of the Council were preparing to meet under the presidency of Archbishop Sancroft at the Guildhall and form a provisional Government to continue until the appearance of William in the City. At the same time the mob showed unmistakable signs of getting out of hand, and later in the day and all the following night disgraceful riots took place, in the course of which several Catholic chapels were attacked and the house of the Spanish Ambassador off Lincoln's Inn Fields was pillaged and burned.

It is not known exactly how Jeffreys spent the next twenty-four hours. He did not return to his house in Duke Street, for in the present temper of the mob it would have been obviously unsafe for him to do so. Instead he appears to have gone down to the docks in the neighbourhood of Wapping, where he had previously arranged with the master of a collier to take him on board, and where he is said to have had shipped a large sum of money, no less than 35,000 guineas. The ship was ostensibly bound for Newcastle, but her real destination is thought to have been Hamburg. Here he shaved off his eyebrows and disguised himself in the rough garb of a common sailor. It is uncertain where he spent the night. He is believed to have received a hint that the ship would be searched and to have withdrawn and slept aboard another vessel.

Early on Wednesday morning he would seem to have gone ashore to obtain some refreshment. He probably landed at

¹ Woolrych, p. 358.

King Edward's Stairs, within sight of Execution Dock, and since it was low tide the depressing sight of a number of bodies swinging in irons from the gibbet would have met his weary eyes. Proceeding along Wapping High Street, and turning to the right up Queen's Head Alley and across Green Bank, he seems to have gone to the sign of the Red Cow, in Anchor and Hope Alley, which is stated to have been kept by the master of the collier which was to carry him to Hamburg. But information as to his movements had already been given to the authorities by the mate of the vessel, and a warrant had been issued for his arrest.

About two o'clock in the afternoon a body of constables and others who were helping in the chase entered the Red Cow. Among the search-party was the Wapping scrivener whom Jeffreys had browbeaten in the Chancery Court a short while previously. Jeffreys, his face blackened with coal-dust and wearing his seaman's disguise, was in the act of drinking a pot of ale, according to one account, and lying down between two blankets in an upper room, according to another version. The scrivener instantly caught sight of "that face which made him start," to quote Roger North's account, "and the Chancellor, seeing himself eyed, feigned a cough and turned to the wall with his pot in his hand." When asked if he were the Chancellor Jeffreys made no attempt to brazen it out, but replied simply, "I am the man."

The news of the Chancellor's capture spread like wildfire, and angry crowds besieged the Red Cow in such numbers that Jeffreys was for a time in danger of his life. However, a detachment of the trained bands had been sent for, and the timely arrival of two regiments enabled him to be removed. Under this protection he was conveyed in a coach to the Lord Mayor, Sir John Chapman, who was at the Grocers' Hall in Cheapside. "There never was such joy," wrote one observer, "not a man sorry that we could see. They longed to have him out of the coach had he not had a good guard." The populace held whips and halters up to his nose and bellowed for his blood. In fact, one of them struck at him. "For God's sake keep them off!" cried the wretched captive, by this time in a state approaching something like terror. Among the spectators who witnessed this procession was the Whig historian Oldmixon,



JUDGE JEFFREYS

From the portrait at Taunton Castle

*By permission of the Somersetshire Archaeological and Natural
History Society*



THE CAPTURE OF JEFFREYS AT WAPPING
From a print in the British Museum.

and his feelings reflect fairly accurately those of the masses in the streets. "I saw him and heard him," wrote Oldmixon, "and I truly say without pity, though I never saw any other malefactor in his distress without compassion and concern."¹

The cavalcade reached the Grocers' Hall as the Lord Mayor was on the point of sitting down to dinner with a number of friends. Outside the building a furious mob continued to gesticulate angrily, and shouts of "Vengeance," "Justice," reached the ears of those within. In fact, the din became so great that, according to one eyewitness' account,

the Lord Mayor was forced to come out into his balcony, and with his hat in his hand desired the people to go away and keep the peace, and did promise them that he had already sent to the Lords of the Council about the matter and that they should have justice done them.

One of the constables who accompanied the fallen Chancellor asked the Lord Mayor for a warrant for his committal to the Tower, but the extraordinary appearance of Jeffreys "in his blue jacket and with his hat flapped down upon his face" so affected the civic head that he "fell a-crying then into a fit, for which he was blooded and put to bed, so, the Lord Mayor being ill, he could not sign any warrant." Jeffreys, on the other hand, was so unconcerned at his position that he is reported to have "satt downe and Eate heartily," an odd touch in the circumstances. Having had a good meal, Jeffreys turned round and happened to see at the table his old friend Sir Robert Geffery, the ex-Lord Mayor. Sir Robert is said to have burst into tears and to have come forward and kissed the Chancellor's hands. Jeffreys also wept, saying, "What have I done that people are so violent against me?" Somebody shouted out, "Remember Cornish." Jeffreys calmly replied that he would have saved him if he could, "but when he could not he saved his estate and had not a penny for it."²

This colloquy was terminated by the appearance of Lord Lucas, the senior officer in command of the Tower. Jeffreys voluntarily surrendered himself into his custody, and was conducted by him to the fortress. The warrant for his committal

¹ *Hatton Correspondence*, ii, 125; Oldmixon, *History of England*, p. 762.

² *An Account of the Manner of taking the Lord Chancellor* (London, 1688) (broadsheet in the Bodleian Library, Oxford); *Verney Memoirs* (1892-99), iv, 446.

on a charge of high treason, which the Mayor was too ill to sign, was completed the same evening by the Lords of the Council.¹

IV

On his arrival at the Tower the fallen Chancellor was comfortably lodged in the house of a warder named Bull. Some days later, however, an order was directed from the Privy Council to the Constable of the Tower ordering Jeffreys to be committed "to a closer restraint," and he was removed to another part of the fortress, the so-called Bloody Tower, though his confinement otherwise does not appear to have been unduly rigorous. On the Sunday following his capture the Chapel of St Peter-ad-Vincula in the Tower was crowded with worshippers, who came hoping to catch a glimpse of the distinguished prisoner, but "he came not out."²

Meanwhile three Lords of the Council had been appointed by the provisional Government to examine Jeffreys, and they came to the Tower for this purpose on December 15. They were Lords North, Chandos, and Ossulston. They asked the prisoner four questions—what he had done with the Great Seal, whether he had sealed all the writs for the summoning of Parliament and what he had done with them, whether he had sealed any patents for the ensuing year, and whether he had any permit to leave the country. To the first he replied that he delivered the Seal to the King "on the Saturday before at Mr Chiffinch's, no person being present, and never saw it since"; as for the second question, "to the best of his remembrance the writs were all sealed and delivered to the King"; likewise with the patents, "but cannot charge his memory with particulars"; finally "he had several passes to go beyond sea" which were all delivered to Sir John Friend, the Commissioner of Excise. These questions, with the answers given, were put in writing and signed by Jeffreys, who added above his signature, "I affirme all this to bee True upon my honour."³

Before the three peers departed the prisoner is said to have expressed his gratitude for the protection afforded him in his

¹ The acknowledgment signed by Robert, Lord Lucas, of the delivery of George, Lord Jeffreys, into his custody is now in the British Museum (Add. MSS. 22183, f. 140).

² Irving, p. 357.

³ H. C. Foxcroft, *Halifax* (1898), ii, 58.

condition and to have requested them to convey to the other Lords of the Council "his humble thanks for their care in preserving him from violence." The hostile feelings of the populace had, indeed, assumed truly violent proportions. Exulting crowds collected outside his deserted mansion in Duke Street, and viewed with evident satisfaction notices pasted up by Moses Pitt that the property was for sale. The two fine portraits which Sir Godfrey Kneller had painted of him, and which hung in the Inner Temple and the Guildhall, were taken down and ignominiously concealed.¹ A spate of lampoons and broadsides attacked his character and desecrated his memory with an unbridled and truly astonishing ferocity. "Hanging would be too mild a death for him," it was argued :

a grave under the gibbet would be too respectable a resting-place: he ought to be whipped to death at the cart's tail: he ought to be tortured like an Indian: he ought to be devoured alive. . . . Nay, the rage of his enemies was such that, in language seldom heard in England, they proclaimed their wish that he might go to the place of wailing and gnashing of teeth, to the worm that never dies, to the fire that is never quenched. They exhorted him to hang himself in his garters, and to cut his throat with his razor. They put up horrible prayers that he might not be able to repent, that he might die the same hard-hearted, wicked Jeffreys that he had lived.²

The dawn of the new year, 1689, witnessed the completion of the Revolution and the consolidation of the provisional government of the country in the hands of the Prince of Orange. In February William and Mary were jointly proclaimed sovereigns, subject to the well-known constitutional limitations of the Declaration of Right. The Great Seal was put into commission, while at the council table in Whitehall were discussed possible measures to be taken against its former custodian. Strictly speaking, the fallen Chancellor's detention was illegal, since no definite charge of high treason had been preferred against him. Unfortunately for Jeffreys, the machinery for

¹ Western MSS., 22106, f. 52. The Inner Temple picture was presented by order of the Benchers to Jeffreys' only son in 1694 (*Calendar of Inner Temple Records*, iii, 306). It is now in the possession of Mr Simon Yorke at Erddig Park, Denbighshire (see frontispiece). The Guildhall picture, which was ordered to be burned, escaped destruction, and was acquired by Jeffreys' daughter Sarah, who married George Harnage, of Belswardyne; it was later purchased by the Earl of Tankerville, and is now at Chillingham Castle, Northumberland. (See plate facing p. 227.)

² Macaulay, iv, 1670.

obtaining a writ of habeas corpus was thrown out of gear in the first days of the Revolution, and shortly afterwards the Habeas Corpus Act was suspended. Pending his being brought to trial, the prisoner in the Tower was treated with some consideration in that he was allowed to receive a number of friends. Visitors to his apartment in the Bloody Tower reported upon his declining health to the authorities, and were inclined to think that he had not long to live. His visitors were, however, confined to members of his family, his executors and trustees, his physician, Dr Richard Lower, and several divines who came to afford him spiritual consolation.

One of these visitors was Dr Sharp, whom, it will be remembered, the Bishop of London had refused to suspend, and who had in consequence been tried by the Ecclesiastical Commission. "What!" said the prisoner, when Sharp was announced, "dare you own me now?" Jeffreys went on to inveigh against the injustice of mankind, mentioning as he did so the malady which now racked his weakened frame through and through. "People call me a murderer," he said, "for doing what at the time was applauded by some who are now high in public favour. They call me a drunkard because I take punch to relieve me in my agony."

White of Peterborough, one of the Seven Bishops, and Frampton of Gloucester also went to see him. Frampton has left an account of the interview. "I found him," he said afterwards, "sitting in a low chair with a long beard and a small pot of water, weeping with himself; his tears were very great ones. I told him not to weep for hardships, but for past sins, in which case his tears were more precious than diamonds."

The broken man looked up and thanked the saintly Bishop. "My lord," he said through his tears, "all the disgrace I have suffered hitherto I can bear, and by God's grace will submit to whatever more shall befall me, since I see so much of the goodness of God in sending you to me; you, that I never in the least deserved anything from—for you to visit me when others who had their all from me desert me. It can be no other than the motion of God's spirit in you. I thank you for your fatherly advice, and desire your prayers that I may be able to follow it; and beg you would add to this the friendship of another visit, at what time I would receive the sacrament."

Another divine who came to see the prisoner was Dr John Scott, Canon of St Paul's. Dr Scott was the author of several works on the alleged evils of Popery, but they do not seem to have discussed this engrossing topic. On the alleged evils of the Bloody Assize, however, the prisoner spoke strongly. "Whatever I did then," he said to this visitor, "I did by express orders; and I have this further to say for myself that I was not half bloody enough for him who sent me thither." ¹

v

It was commonly said both at the time and afterwards that Jeffreys hastened his end by excessive draughts from the brandy bottle. Another story is that he was poisoned by William of Orange, who caused a large dish of mushrooms to be set before the prisoner after the manner of some of the Roman Emperors. Neither report has any substance in fact. The poisoning theory, although it gained some credence on the Continent, is almost too fantastic to merit consideration. Those who constantly saw him during his confinement could not have failed to notice symptoms of poisoning if there had been any, whereas his condition pointed throughout to the aggravated effects of the stone. The charge that he soaked himself in strong liquor is also contradicted by reliable witnesses. Occasional draughts of sack to revive his strength and some weak punch to alleviate the constant agony of the stone are stated to have been the only liquids which passed his lips at this time.

In January his illness took a fatal turn. By now the stone had caused severe inflammation of the bladder, and the infection had spread to the kidneys, which were being gradually eaten away. His digestion was so upset that he was unable to retain any solid food in his stomach, and it was only with difficulty that he could consume a poached egg and not vomit afterwards. In this pathetic condition he continued for three months.

Towards the middle of April he had a feeling that the end was not far off. He therefore sent for his wife and son, and in their presence received the sacrament at the hands of the Bishop of Gloucester, who had previously visited him. At the

same time he made his will, which had previously been prepared according to his instructions.¹ This document, which is dated April 15, 1689, has a particular interest since it contains an *apologia* for the testator's conduct on the Ecclesiastical Commission. It begins:

I George Lord Jeffreys of Wem, being heartily penitent for my sins and begging forgiveness for the same, I give and submit my soul to God who gave it, and my body to the grave to be decently and privately buried.

He appointed as the executors of his will "my dear wife Lady Ann Jeffreys, my brother Dr James Jeffreys, William Stringer, Esq.,² Jeffrey Jeffreys, and John Jeffreys, merchants of London."³

He began by referring to the settlement of his landed property, which, it will be remembered, he had executed the previous October in favour of his wife and son. His son had lately shown marked signs of dissipation and extravagance, so that Jeffreys now cut down the allowance which he had made him in the settlement during his minority to any sum not exceeding eighty pounds. To his wife he left from his personal estate various jewellery and "all her dressing plate with the whole furniture formerly in her chamber and closet in Duke Street."

He bequeathed forty shillings to all men and maids in his service above wages due, and to one old and faithful servant, Joseph Gosling, he left an annuity of forty pounds, chargeable on his premises in Coleman Street. To the Bishops of Gloucester and Peterborough, Dr Sharp, his cousin Sir John Trevor, and his sisters-in-law, Lady Moore and Mistress Mary Bludworth, he left forty shillings each with which to buy themselves mourning rings. His executors and trustees and other "kind friends in my distress" received ten pounds each and smaller sums. And if he has omitted to mention any of those who have shown him kindness in his affliction he begs his executors to make good the omission as they shall think fit. The trustees⁴

¹ Now preserved in Somerset House.

² His son-in-law.

³ Nephews of his old friend Alderman John Jeffreys, the "great Smoaker," who had died in the previous year, leaving them a fortune of £300,000. They assisted their uncle in his tobacco business, and later entered Parliament. Jeffrey Jeffreys was elected Sheriff and knighted in 1699.

⁴ Sir Robert Clayton, Henry Pollexfen, Edward Jennings, and Thomas Coulson were trustees of the settlement dated October 25, 1688. See p. 294.

were further charged with a duty which confirms the suspicion that Lady Jeffreys was not a good stepmother. "And I desire my trustees to take special care in the virtuous education of my children by my former wife and hope my now wife will be careful of hers."

Finally, he desired to be buried in the City church of which he had so long been a parishioner, St Mary the Virgin, Aldermanbury, "as near as may be to my former wife and children, and at about ten of the clock at night without escutcheons and all funeral pomp and show, and with few persons thereto."

The striking words with which he concluded this testament indicate the hopes which he entertained of being able to justify his public conduct should he be impeached:

I was in hopes, notwithstanding my long indisposition of body, I might by the blessing of Almighty God have recovered so much strength as to be able to have vindicated myself if called to account, and made out that I never deserved to lie under the heavy censures I now do. I am sure I would have excused myself from having betrayed that Church of which I have lived and died a member. I mean the Church of England, which I take to be the best Church in the world; and, in the words of a dying man, I declare I never contrived the Ecclesiastical Commission, and never acted thereon save in order to the service not overthrow of that Church. And I do charge all my children, upon the blessing of a dying father, they be steady to the commands I have given them of being firm even to death to the principles of that Holy Church.

As soon as the will had been signed and witnessed the sick man, according to one of his trustees, Edward Jennings, who remained with him to the last, "gave his family many pious admonitions and exhortations in moving and compassionate expressions, and continued very devout to the time of his death."

The end came four days later. "It happened according to my expectation," wrote Jennings to Dr James Jeffreys on April 19;

for this morning about four o'clock it pleased God to deliver him out of all his troubles and miseries.¹ He was taken with a looseness

¹ He died "at 35 minutes past four in the morning" on April 19, 1689, according to an endorsement on the back of the warrant committing him a prisoner (J. Bayley, *The Tower of London* (1825), ii, 638). I am satisfied that the date of Jeffreys' death was April 19, and not April 18, as stated by some authorities.

on Saturday which continued upon him till yesterday. And I did not think it was possible when I came to him on Monday¹ [for him] to continue so long. He was very sensible to the last and had his speech till a quarter of an hour before his death, which he was apprehensive on Monday was approaching. . . . I suppose he will be interred privately on Sunday night in the Tower, so it will be necessary for you to come up on Saturday if possible.²

A warrant was issued the same day by the new sovereign to the Governor of the Tower requiring him to hand over the body of the late Chancellor to his relatives. It does not appear, however, to have been acted upon, for, notwithstanding the express directions in Jeffreys' will, his remains, placed in a leaden coffin, were buried in the Chapel of St Peter-ad-Vincula in the Tower. Within the next few months an attempt was made in the House of Commons to declare his honours and estates forfeit by passing a posthumous Bill of Attainder upon him, but it failed, and the project was dropped.³ Had he lived another month he would have completed his forty-fourth year.

Three years later his relations begged that they might be allowed to remove the coffin, and in consequence a second warrant was issued to the Governor "for his delivering the body of George late Lord Jeffreys to his friends and relations to bury him as they think fit." After a considerable delay, possibly due to a fear of riots attending the reinterment, this warrant was acted upon. At last, on November 2, 1693, the remains were transferred from the Tower to St Mary's, Aldermanbury, and deposited in the family vault beneath the communion table.⁴

Owing to the comparative secrecy with which this burial took place, stories got about that the late Lord Chancellor's remains were carried to other resting-places when they left the Tower. According to one story, the body was placed in the Stringer family vault at Enfield, while another account states that the remains were taken to Dorchester and walled up in an old house. A third legend has it that the corpse was carried to Taunton, where it was decapitated by an angry crowd, the headless trunk being subsequently interred in the neighbouring

¹ April 15, the day he made his will.

² Jeffreys MSS. (*Home Counties Magazine*, xii (1910), 92).

³ *House of Commons Journals*, x, 280.

⁴ *Registers of St Mary the Virgin, Aldermanbury*, Part II, p. 218.

village of Stocklinch, in a leaden coffin, which when the vault was flooded was observed to float. These stories are still believed in the parts of the country where they originated, although they have no substance in fact to support them. There is no doubt that the body of George, Lord Jeffreys, rests in the Church of St Mary, Aldermanbury, for in 1810 when workmen were executing some repairs to the chancel the coffin, "in its rich clothing of crimson velvet with gilt furniture" and with a plate having his name inscribed upon it, was exposed to view.¹

A memorial tablet, recently erected in St Mary's Church, marks his last resting-place in appropriate language:

IN MEMORY OF GEORGE BARON JEFFREYS (OF WEM)
RECORDER OF LONDON, CHIEF JUSTICE OF THE KING'S
BENCH, AND LORD CHANCELLOR OF ENGLAND 1685,
FORMERLY A RESIDENT IN THIS PARISH, AND WHOSE
REMAINS ARE BURIED IN THIS CHURCH.

The Lord seeth not as man seeth.

1 Sam. xvi, 7

¹ Woolrych, p. 382.

BIBLIOGRAPHICAL NOTE

SINCE detailed references for all statements of fact have been given in footnotes to the text, only the principal authorities for the life of Judge Jeffreys are indicated here.

(A) MANUSCRIPT SOURCES

It has been surmised that Jeffreys destroyed many of his papers prior to his arrest. Some came into the possession of his principal trustee, Sir Robert Clayton, and others were acquired by the antiquarian John Locker. Many more disappeared, and their whereabouts have never been ascertained.

Jeffreys' meagre official correspondence is preserved with the State Papers (Domestic Series) in the Public Record Office. This has been calendared and published (*C.S.P. (Dom.)*) down to the end of the reign of Charles II. References to Jeffreys' proceedings on circuit will also be found in documents in the Public Record Office. Allusions to his official duties as Common Serjeant and Recorder of London are contained in the City Archives in the Guildhall. The lists of presentments on the Bloody Assizes in 1685 are in the British Museum (Add. MSS. 31957).

A small selection of his private letters (Jeffreys MSS.) descended from his brother James, the Prebendary of Canterbury, to Mr R. Darrell Jeffreys, of New York, the present head of the family. They were accidentally destroyed by fire some years ago, but authenticated copies of all the letters had previously been made, and a complete set is now in the possession of Mr A. Gerald Jeffreys, of Romsey, Hants. A portion of this correspondence was published by Mr W. H. Wadham Powell in the *Home Counties Magazine* (March-June 1910) ("Letters and Notes relating to the Family of George, Lord Jeffreys, Baron of Wem, 1684-89").

A remarkable collection of Jeffreys' private accounts and bills, at one time in the custody of Sir Robert Clayton, was acquired in 1929 by Miss M. Melville Balfour. Miss Balfour has given a careful and scholarly account of them in the *Law Journal* (lxviii (1929), 330 *et seq.*). Details of similar documents which have recently come into the auction room can be obtained from Sotheby's sale catalogues for March 25, 1929, April 23, 1934, and February 17, 1936.

Some interesting biographical and family details are to be found in the papers of the Rev. J. B. Blakeway, the historian of Shropshire, in the Bodleian Library, Oxford. They are contained in his notes for the history of Shrewsbury School (Western MSS. 22108) and his annotations to S. Garbet's *History of Wem* (Western MSS. 22106). There are also some references to Jeffreys in the Rawlinson MSS., in the Bodleian. Rawlinson mentions (B. 217, f. 10) that the original draft of James II's will, with marginal notes in Jeffreys' handwriting, which is in this collection, was given to him by John Locker in 1728 (see above, p. 297 n.).

(B) PUBLISHED SOURCES

Lives of Judge Jeffreys have been written by H. R. Woolrych (1827), Lord Campbell (in his *Lives of the Chancellors*, vol. iii (1857)), E. Foss (in his *Judges of England*, vol. vii (1864)), H. B. Irving (1898), Sir Edward Parry (in his *Bloody Assize* (1929)), J. G. Muddiman (in his *Bloody Assizes* (1929)), and Seymour Schofield (1937). An interesting medical and psychopathic study has been published by J. Kemble in his *Idols and Invalids* (1933), and useful theses from the legal aspect have appeared in *Select Essays in Anglo-American Legal History* (vol. i (1907)), by J. M. Zane, and in the late Lord Birkenhead's *Fourteen English Judges* (1926).

An excellent account of the legends associated with Judge Jeffreys has been written by the late Mrs M. C. Balfour ("The Making of a Myth") in the *English Review*, xlix (1929), 200.

The principal contemporary diaries and memoirs are those of Pepys, Evelyn, Luttrell, Resesby, Clarendon, Ailesbury, Bramston, and Henry Sidney. There is also the correspondence of Hatton, Ellis, Clarendon, Rochester, and the Verney family. The works of Roger North are particularly valuable. Of importance, too, are the histories of Burnet, Dalrymple, L'Estrange, Oldmixon, Echard, Ralph, Mackintosh, Lingard, Ranke, and Macaulay.

Reports of Jeffreys' work at the criminal Bar are contained in the various collections of *State Trials* and *Old Bailey Sessions Papers*. His King's Bench decisions are preserved in Skinner's *Reports* and *Modern Reports*, and his equity judgments have been recorded by Vernon.

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